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COMMITTEE ON JUDICIARY
February 17, 2005
LB 654, 322, 128, 396, 444

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 17, 2005, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 654, LB 322, LB 128, LB 396, and LB 444. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Ernie Chambers; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: None.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is the 13th day of committee hearings. We will hear five bills today. I'm Pat Bourne from Omaha. To my left is Senator Mike Flood from Norfolk; Senator Friend from Omaha. The committee clerk is Laurie Vollertsen. The legal counsel is Michaela Kubat. And every day, it's like I work with these people every day and I forget a name always. It's Mike Foley from Lincoln. You know, it's part of being 40 years old. I'll introduce the other members as they arrive. Thank you, we'll have the name tags turned this way. I'll introduce the other members as they arrive. Now, I do want to point out that as the hearings progress some members will come and go. They have business to attend to or bills to introduce. Please don't take offense if a member leaves during the testimony. It's simply they are having to introduce another bill. If you plan to testify on a particular bill I'm going to ask that you use these two on-deck chairs here and sign in in advance while the previous speaker is speaking. I want you to, if you would, sign in at the on-deck table. Please print your information so that it's legible. Following the introduction of each bill I'll ask for a show of hands to see how many people plan to testify on a bill. We'll hear the introducer, then we'll have proponent testimony followed by any opponents and then at the end we'll have neutral testimony. When you come forward to testify where Senator Beutler is, please clearly state and spell your name for the record. All of our hearings here are transcribed and the transcribers would appreciate it greatly if you spell your name for them. Due to the large number of bills heard here in the Judiciary Committee, we do use the lighting system. You'll see that on the table in front of you. The senators introducing the bills get five minutes to open and three minutes if they decide to close. All other testifiers get three minutes

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exclusive of any questions the committee might ask you. The blue light goes on at three minutes. The yellow light comes on as a one-minute warning and then the red light indicates your time has expired so if you'd like to finish your thought or sentence that'd be great. The rules of the Legislature state that cell phones are not allowed in hearing rooms so if you have a cell phone please disable the ringer. We also don't like public displays if somebody says something that you don't like we don't want to hear any hollering or displays from the audience. We will not allow you to read someone else's testimony. We will let you submit that to us but if you have a letter from somebody else, a different organization or something, we don't want to read that into the record. But we will take it and make it a part of the record. With that, we've been joined by Senator Aguilar from Grand Island. And Senator Beutler to open on LB 654.

LB 654

SENATOR BEUTLER: (Exhibit 1) Senator Bourne, thank you very much. As I think you're personally aware and as other members of the committee may be aware, I have filed bills in the past promoting the participation of both parents in the lives of their children in situations where parents are divorced. Existing evidence as well as common sense, I think, suggests that this is normally in the child's best interest. Senator Brashear and perhaps other members of this committee in the past have also worked to advance joint custody concepts. This bill I must acknowledge is basically Senator Brashear's work which I am carrying forward this session because of my long-standing interest in the issue and because he's burdened, as you know, with the duties of the speakership. This bill furthers the idea of joint custody by encouraging the courts to become more engaged in divorce actions involving children. It calls on them to look for ways to accomplish a more sophisticated, fairer, and better result for children of divorce through the concept of parenting plans essentially. And with that preface and considering the short amount of time, I want to try to work you through quickly the basic points of the bill. The first thing that it does on page 2 of the bill is that it bifurcates a concept that has been somewhat confused in the past and in this area of the law. We talk about

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joint custody but in this bill we start to define two kinds of custody, joint legal custody that is a setting forth of the basic legal rights with respect to the child of each parent and that's defined for you on lines 7 through 10. And then the other idea of physical custody, joint physical custody and what that means, two distinct ideas and that's described for you on lines 11 through 14 of the bill. So we clarify what we're talking about. Then down towards the bottom of page 2 of the bill is the most important part, I think. The last sentence on that page begins custody and time spent with each parent shall be determined on the basis of the best interests of the minor child. And that is the key resonating phrase throughout all of custody law, what is in the best interest of the child. And it goes on to say with the objective of maintaining an ongoing substantial involvement of both parents in the minor child's life and then the new language which strengthens the idea of joint custody. And first consideration shall be given. First consideration shall be given by the court to placing the minor child in joint legal custody. The custody determination of the court shall include both the determination of legal custody of the child and the determination of physical custody of the child as separate and independent issues. That's the big change and that is a change from some language over on page 4, line 20 which is key language that's crossed out. It crosses out the old rule and the old rule was, there's no joint custody unless both parents agree. So the big change in the bill is changing the judge's prerogative with regard to joint custody from a situation where both parents must agree to a situation where the judge will decide based on the best interest of the child. And they will make the assumption that first consideration should be given to establishing joint legal custody. The bill then goes on to reiterate the importance of the best interests of the child in setting forth some of the legal procedure. Another very important part of the bill, though, to meet the concern and a legitimate concern that many people have is the last line on page 3. It says the court need not consider joint legal custody or joint physical custody if it finds credible evidence of abuse inflicted on any family or household member. So it would never be a situation where joint custody was imposed upon a family that had experienced abuse type of problems. And then it goes on and I'm not going to have time to describe it all, but basically it goes on to

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describe how the parenting plan, and if you're interested in parenting plans I set out the statutes on parenting plans and you can read how they work. But the court would do more work, a little more work now in establishing and working through parenting plans to further define both what the joint physical custody of the child will be and also if they want to...well, and then the joint legal custody would generally be in the decree itself. So that's the basic framework as I understand it and what is being proposed to you with Senator Brashear's language which I adopt and fully endorse as my own language.

SENATOR BOURNE: Thank you. Before asking questions of Senator Beutler, could I get a show of hands of those folks here in the audience testifying in support of this bill? I see roughly ten. How many in opposition? I see roughly four. Are there neutral testifiers? I see none. Are there questions for Senator Beutler? Senator Foley.

SENATOR FOLEY: Thank you, Senator Bourne. Senator Beutler, is this word for word the same bill that Senator Brashear brought to the committee two years ago?

SENATOR BEUTLER: Senator, as best I can recall, I believe it is.

SENATOR FOLEY: Okay. Because I sat on the committee when this bill was heard last time and I remember it quite well and I'm just very grateful that you're taking up this issue. I think it's a great issue and I sure hope you can make some progress with this in bringing the parties together and somehow moving this forward. I think we really need to do this so thank you for your work on this.

SENATOR BEUTLER: Thank you, Senator.

SENATOR BOURNE: Thank you. Further questions for Senator Beutler? I see none. Thank you. And then again we're going to make use of the on-deck area so those folks that are here to testify in support, if you'd make your way forward and sign in while the previous testifier is speaking so we don't have a long delay in people signing in so make your way forward, those proponents, and sign in, please. Welcome to the committee.

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TAMIM AL-TIMIMI: Good afternoon, Senator Bourne. Good afternoon, Senators. My name is Tamim Al-Timimi and I am in support of LB 654.

SENATOR BOURNE: Could you spell your name, sir?

TAMIM AL-TIMIMI: Yeah, it's T-a-m-i-m, last name A-l-T-i-m-i-m-i. And I just took some time to, you know, look over actually not just LB 654 but LB 322 and LB 128. And I see a relationship here and it appears that every time when you don't have an opportunity to have equity and equality and harmony at the very get-go of any dissolution of marriage then you have all these other problems that come from having a hostility at the front end. So then you have, you know, problems regarding, you know, child support. Maybe a parent doesn't feel like they're maybe seeing their children. You have possibility of one parent trying to strengthen their case in the court of law and a, you know, custody thing so now you got false allegations. I mean, it just goes on and on and on. And I've had a great opportunity to travel around the world and I had an opportunity to work with some attorneys in the Netherlands. And I was really impressed, I was working on one case over there but I was really impressed with how they dealt with family law and what they basically did was they appointed one attorney for almost like a guardian to the parents as well as the children and then they managed. And I was just really impressed with just the harmony that, you know, came out of that type of arrangement and being aware and being familiar with personal experiences and then looking around me, watching the news, seeing what's going on, you know, you see someone, you know, doing some family killings or something like that. It's, you know, there's something that's a result like an effect from something that's just not good at the very beginning. And I think it's in our best interest to just go ahead and consider, you know, by default joint custody and if things don't work they can go back to court. I mean, the courts have the power and I don't understand why, you know, we would wait, you know, why we would have this consideration. And then all these other bills that we're dealing with. We have all these people from the state who are dealing, you know, they're on our tax dollars here and they're representing something here. And we have an attorney who doesn't support this. You know, I don't understand this. I think what we need to do is just,

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you know, start off, you know, give the benefit of the doubt to the family, to the courts. Things don't work, then we go back. I don't know why that's so difficult. And, again, like I said, I was really, really impressed with what I saw and when I even interviewed the attorney over there and it was an eye-opener. And I just, I think we have a lot to gain and if things don't work out, we can always go back to court. It's that simple. And I think these other bills like LB 128, LB 322, all this other stuff, I think, it will have a way of ironing itself out. It will diffuse it. It will bring it down a little bit, something to think about.

SENATOR BOURNE: Absolutely. It's Al-Amini? Al-Amini is...

TAMIM AL-TIMIMI: No, it's Al-Timimi.

SENATOR BOURNE: I'm sorry.

TAMIM AL-TIMIMI: Yeah.

SENATOR BOURNE: Are there questions? Seeing none, thank you. Next testifier in support? I should mention that if you do have handouts, if you just set them on the edge of the desk as you make your way forward the page will distribute them so thank you. Welcome to the committee.

LES VESKRNA: (Exhibit 2) Good afternoon, Senators. My name is Les Veskrna. I am the executive director of the Nebraska Children's Rights Council.

SENATOR BOURNE: Would you spell your last name, please?

LES VESKRNA: V-e-s-k-r-n-a. I am also a family physician. I think LB 654 boils down to this. Is it better for the court to impose shared parenting despite the initial objection of one parent when this conforms to a child's best interest or is it better for the court to award full custody to one parent as we have always done and accept the significant risk that a child will eventually lose the emotional resources of the other parent. For a possible answer to this question, I would like to refer you to a few pages that I've attached to the back of my written testimony of a book that was published in 1998 by Dr. Sanford Braver, a psychologist from Arizona State University. Dr. Braver studied three groups of divorced parents. One group in

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which both parents initially preferred and were subsequently awarded joint custody; the two remaining groups were conflicted parents. In these, the fathers wanted joint custody and the mothers wanted sole custody. Of these last two groups, 77 percent ended up with sole maternal custody and 23 percent obtained joint custody. Three years later, Dr. Braver examined outcomes of these three groups of parents. Dr. Braver was particularly interested in determining the impact of joint versus sole custody when the parents had initially disagreed. Dr. Braver found when joint legal custody was awarded over the mother's initial objection that father's child support compliance and contact with his children was significantly higher. But probably more important and a point to be emphasized here is what Dr. Braver did not find. There was no differences between the sole custody in both joint custody groups and parental conflict, psychological distress, or mother's capacity to parent, and a number of other variables. Probably the most significant problem with sole custody is that it bestows complete power and control over the other parent, the noncustodial parent. And as our domestic violence advocates unfortunately know very well, this power and control can lead to abuse of the other parent. This parent then faces a choice of either fighting back or taking the path of least resistance, physical or psychological disengagement from the child and this is a relationship that many children just can't bear losing. There's a lot of children in our state who are at risk or in crisis. Everyone seems to be worried about pulling children out of the river before they drown but I'd like to suggest that we ought to be looking upstream to see who's throwing them in. It appears to me that our child custody statutes and our judiciary has been throwing some children in the river because our child custody practices routinely take away one of the two most important people in our children's lives. Thank you.

SENATOR BOURNE: Thank you very much. Are there questions? Seeing none, thank you. The committee has been joined by Senator Pedersen from Elkhorn which is a suburb of Omaha. Next testifier in support. Welcome.

GERALD MOREHOUSE: My name is Gerald Morehouse, M-o-r-e-h-o-u-s-e. The reason that I feel that this LB 654 is a good bill is because it unties the judge's hands from doing what they think is in the child's best interest.

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Right now if one of the parents don't agree to joint custody the judge can't award joint custody and let me lay that out as a situation for you so if the father and the judge both agree that it's in the child's best interest to have joint custody but the mother does not agree to it then even if that's what the judge wanted to do he cannot order that. If we're going to trust judges to make custody decisions, shouldn't they be able to make those decisions on their own instead of having their hands tied by a selfish parent? Attorney Matt Higgins is the head of the family law section for the Nebraska Bar Association. In a television interview aired on Omaha's Fox affiliate, KPTM Fox 42 last year, Mr. Higgins made the statement that women have an economic disincentive to agree to joint custody. In case you didn't know this, physical custody plays an important role in determining the amount of child support to be paid from one parent to the other. Even if a divorcing mom knows that her child will benefit from a joint physical custody arrangement, many times the decrease in child support that she will receive overpowers her conscience to do what's right for her child. I don't think that a child's best interests should be held for ransom by greedy parents who put their pocketbooks ahead of their children. Passing this bill would stop them from doing exactly that. Please pass this bill. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Morehouse? Seeing none, thank you.

GERALD MOREHOUSE: Thanks.

SENATOR BOURNE: Next testifier in support?

KATIE TAYLOR: (Exhibit 3) Actually, I don't have enough copies for everybody of this.

SENATOR BOURNE: That's okay. We'll have some made.

KATIE TAYLOR: Okay. Thank you everybody for being here today. My name is Katie Taylor and I'm an 18-year-old senior at Westside High School in Omaha. My parents divorced over nine years ago. I have lived in a childhood full of anger, hate, and a lot of frustration both inside and out of the courtroom. I was alienated against my father and exposed to many abusive situations from a mother who

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didn't think that it was important enough to have the other parent be a part of their children's lives. I fought for the right to see my father and moved to Omaha about three years ago. Since then, my sisters are still kept from seeing both my father and myself. There is nothing being done with the law to enforce that my father be able to see my sisters due to this lack of custody. When he tried to see my sisters and I in the past, the court system failed us. Time after time the courts always found the case contemptible but no actions were made. This is why I chose this topic for my senior project since it's a requirement that we have with our high school to graduate. And during my experience doing this project I found that this story isn't uncommon. It happens to many children. I've heard it over and over again. I mean, I've heard it from the members of fathers' rights; I've heard it from the members of children's rights, and I've heard it at the What About the Children seminars that are even court enforced. I've even heard it from my friends. I keep hearing these stories so it's not giving me assurance that something is being done about these issues and not being able to see children. There's something wrong with the system. Divorce affects more than one million children a year, with negative effects as a result of such separations. Children come into the world with two parents and they should be able to enjoy the company of both a mother and father, if possible, during their formative years. One thing that all researchers agree on is that children with only one parent are more at risk of getting involved with drugs and crime, having lower self esteem, alcohol problems, and even being unable to form lasting relationships when they grow up. They are also more at risk for social and mental problems. I know this, I'm living proof. I've had a lot of problems because I haven't been able to see my father because I've had so much hate and frustration because of what has happened with the system. I don't know what to do about it. I urge you to consider passing LB 654 in order to solve this obvious problem. To me, family is of utmost importance. This idea needs to be demonstrated in the law as well. And I hope that someday situations similar to mine, where you can't see your parent, are solved with improvements in the law. I feel that's the only way that we can actually reach out. You can't tell the judges standing up there that determine your fate, you can't tell them what to do. You can't tell them your situation because...just because of all the restrictions that you have

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of being a minor or just being a child. And so me being a child, speaking out like this, I hope that you will duly consider passing this. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Ms. Taylor? Seeing none, thank you. We appreciate your testimony. Next testifier in support?

JODI SKIBINSKI: (Exhibit 6) Thank you. My name is Jodi Skibinski, S-k-i-b-i-n-s-k-i. I am in favor of LB 654. Being a divorced mother myself and sharing custody of my two children with my ex-husband, I am living proof that the system can work. I believe that divorce is between a man and a woman and that the children should be left out of it. This means letting the children have equal access to each parent. I can also testify to the terrible things that can happen when sole custody is granted. My fiancé is in a constant fight to see his children. The way his ex-wife is able to use... excuse me, I'm very nervous.

SENATOR BOURNE: That's okay, there's nothing to be nervous about, but we do appreciate you testifying, so....

JODI SKIBINSKI: The way his ex-wife is able to use the children to control the situation is appalling. He's a very good dad and always pays his child support. There is no means for noncustodial parents right now to fight this only to go back to court which is very expensive and often gets them nowhere. There is also the effect that the constant strain has on his mental and physical health, he only wants to be able to spend time with his children and he has been not allowed to because the mother doesn't think it's important. This bill would go a long way in helping him and many others in our state to be able to spend precious time with the kids that they love so much. And that's all I have.

SENATOR BOURNE: Thank you. Are there questions for Ms. Skibinski? So what made you decide to do joint custody? I mean, it sounds like, you know, what the previous testifier indicated it had to be a mutual agreement and...

JODI SKIBINSKI: Right, we did. Because like I said, divorce is between mom and dad. It's not between...

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SENATOR BOURNE: And you recognized that at the time. Understood. Further questions? Seeing none, thank you. Appreciate your testimony very much. Next testifier in support. And when I had asked for a showing of hands earlier, there were about ten people so if there's other people that would make their way forward and use the on-deck area and sign in. Welcome to the committee.

KEN HUGO: Okay. My name is Ken Hugo, H-u-g-o. And I'm testifying in favor of LB 654. I've been testifying for joint custody bills for however long they've been introduced, probably seven, eight years at least. And we already heard that there are probably 40 states that have this in place already. That doesn't mean 40 are right but it certainly can't mean that 40 are wrong either. And I guess I really don't need to be here because I'm one of the aberrations of the situation. I have joint custody and I also make decisions on my son's dental health and physical health so it would be easy. I almost don't want to be here because people will say, see, the system works. But I'm probably the one in what, 1,000, 5,000, whatever. But my son has seen how well this has worked for him. I guess just on page 4 there's a section in C there and it talks about the decree can order a joint custody legal custody and I think the judges do have an out here. I mean, usually there is a temporary custody situation there and even if the judge says, you know, one person is really horrible and at that time he could rescind that. So I think that the judges, the concern the judges have, you know, options is not a valid point. He does have options. And there's the one section...also in that section C on page 4 about line 9, I would almost like to see that, actually, I would like to see it a decree, shall include rather than may. I would like to see that shall include a parenting plan to be developed by the parents or the court and then pursuant to the parenting act because I think that that may well, maybe we should, maybe we shouldn't. And I think this says, it shall be and it's consistent with state law with the parenting plan there. As I said, I know that joint custody does work. My son is better for having joint custody. It has avoided power struggles that we could have had that I see happen. We don't have that. I think it's better for my former wife because she knows that I will back her on discipline issues, things like that, and I've been able to see my son regularly. I think that that is an important thing is her

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knowing that I will back her and support her on certain issues, and I believe that it can work. And I think that parents should be given this option first rather than no option. That is all that I have. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Hugo? Seeing none, thank you.

KEN HUGO: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support? And, again, other testifiers, if you'd make your way forward to the on-deck area and sign in. Welcome to the committee.

CALVIN SUTHERLAND: (Exhibit 4) Thank you. My name is Calvin Sutherland, S-u-t-h-e-r-l-a-n-d. And I've got a prepared statement.

SENATOR BOURNE: Sure.

CALVIN SUTHERLAND: Do you want me to read it or just?

SENATOR BOURNE: If you'd like to read it, sure.

CALVIN SUTHERLAND: Okay. I would like to offer my support on behalf of LB 654 as a concerned citizen and father of a two-year-old boy, Chase, born with radial ulnar deficiency. My son has a bowed forearm. This is what it is and he was born with three fingers on his left hand and four fingers on his right hand. Since Chase's birth little has been done besides taking him to Shriners Hospital in St. Louis when he was three months old to have his deficiency diagnosed which I was not notified about until the day before he left. It has only been recently since I filed for custody that his mother, who has temporary custody, is actually beginning to look for a specialist so that he will be treated. We have made appointments with a specialist in Omaha and twice his mother failed to show up for those appointments. Recently she made an appointment in Iowa City with a specialist and only told me days before the appointment, but then canceled that appointment due to a prior engagement. I feel my son deserves better than this. And as the father, who, by the way, pays for medical insurance, should have the legal right to have a say in my son's medical care that he will need for

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the rest of his adolescent life. I feel that LB 654 will give me that right and the right to other parents to have an equal say in how their children are raised, educated, and taken care of. I think with the medical conditions that my son has, I feel that I should at least have a say-so in how he is treated, where he is treated, equal say as to his mother. I've been to court, in the court process twice now. The first time we went to court it was dismissed due to taking so long to get through the court and then after that we mutually agreed that I would see my son on the weekends that I didn't work which is every third weekend I work. I got him during the week, two or three times a week whenever she'd come to Omaha. She filed for more child support recently back in August. I refiled for joint custody which she denied and so I filed for custody. Right now we're in a custody...I don't want to say battlement. We're going to court for custody. Since she filed for more child support, I didn't get to see my son for four months while we were in court until the judge finally made a ruling after I was seeing my son on almost a weekly, every...almost every other day basis. And I feel that you can't take a two-year-old child like that and just rip him from his father's life, that he should, you know, it's not right. And I missed his birthday. I missed Father's Day with him. I missed...I almost missed Christmas with him if it wasn't for my mom to write a letter to the judge that I wasn't going to see him for Christmas either. So I just hope that something's done and this bill gets passed. I thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Sutherland?
Senator Foley.

SENATOR FOLEY: Thank you for coming today. You had mentioned that there was a period of time when your son was not receiving medical attention for his problem. What length of time was that did you say?

CALVIN SUTHERLAND: When he was...well, this was a paternity case. When he was first born, lawyers told me not to go to the hospital or anything because I really wasn't sure that he was mine. I didn't find out about his medical condition until two months after he was born to which I immediately wanted to know what was wrong with him, and I knew that he was my son. He needs to see an orthopedic specialist so they took him to Shriners Hospital in St. Louis. I wasn't

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even aware of, made aware of that until the day before they left.

SENATOR FOLEY: And after that diagnosis, how much time lapsed?

CALVIN SUTHERLAND: After that diagnosis, after the case was dismissed, we decided to take him to a specialist. We talked about it and we decided to take him to a specialist because he was going to a physical therapist and they recommended a doctor in Omaha. We decided to make the appointment. I went there, I filled out the paperwork, and she never showed up. I waited there an hour. She never told me why she didn't show up or anything like that. We made another appointment a month later and she cancelled it. After that, really nothing has been done until just recently we found a specialist in Iowa City that's supposed to be...

SENATOR FOLEY: And is that lapse of time going to compromise his ability to...

CALVIN SUTHERLAND: She is saying that he...when she first took him to Shriners they said...she said that they said it was, he'd have to be three years old before they'd do anything. Well, there's nothing in his medical records that says that. I've got his medical record. There's nothing in it that says that so I mean, I thought the sooner we could get in there and get somebody to look at him, you know, at least to know, you know, if it is three years, fine. But if it could...something done sooner I'd want to get him in for that so.

SENATOR FOLEY: Right. Right. Thank you.

SENATOR BOURNE: Further questions for Mr. Sutherland? Seeing none, thank you.

CALVIN SUTHERLAND: Okay. Thank you.

SENATOR BOURNE: Next testifier in support? Welcome.

JEFF BETTENHAUSEN: My name is Jeff Bettenhausen, spelled B-e-t-t-e-n-h-a-u-s-e-n. And I'm in support of LB 654. I think we could all agree that two good parents are better than one. And we live in a state right now that believes

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that one parent is better than two good parents. And the mentoring program in this state is phenomenal, it's great. But we wouldn't need all these mentors if the courts allowed parents that want to be fathers to their kids the opportunity. And the only way you can do it to start with is to have joint custody mandated by the courts. I first went to court, I think it was in '95 or '96. We agreed to settle. I agreed to give the mother of the child sole custody in exchange for liberal visitation because I knew that if I went for joint custody before the judge that the mother did not agree, and I would be left with a status quo visitation with is Wednesdays and every other weekend. So I did receive a little bit more than that by giving up custody and agreeing to pay child support, I gained time which I thought was wonderful except for the simple fact that a couple of years later, even though the child previous to this had spent 50 percent of the time overnight in my care. So I agreed and I felt really good. I was able to see my child twice a week and every other weekend, overnight visitation. And at some point after that, two or three years later, she decided that that wasn't appropriate and we went back to court. And now I'm left with the status quo, Wednesdays and every other weekend even though there was no disruptions proved. All I would like to finish with is that we put so much faith in the teammates' program which is a great program. There's a lot of good parents out there that want to be good parents and that can't. And when my son comes over for his Wednesday evening visitations, he has friends that do not have fathers in their lives and they come over with him and they call me Dad. Now there's something very wrong with that and I'd just like to end with that but I think this is a good bill.

SENATOR BOURNE: Thank you, appreciate your testimony. Are there questions for Mr. Bettenhausen? Seeing none, thank you.

JEFF BETTENHAUSEN: Thank you.

SENATOR BOURNE: Next testifier in support? No other testifiers in support? Are there opponents?

TARA MUIR: (Exhibit 5) Good afternoon, Senator Bourne and members of the committee. My name is Tara Muir, T-a-r-a M-u-i-r. I'm the legal director at the Nebraska Domestic

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Violence Sexual Assault Coalition. I'm here today on behalf of the network of 22 programs and we're actually private nonprofit organizations. We're not employed by the state. And 16 of those programs are represented here today with advocates from the programs who were here for an earlier training. These folks are from across the state who serve victims of domestic violence and sexual assault and I'm representing them to express our concerns about LB 654. We work with a lot of victims and LB 654 does not meet those families' needs in regard to domestic violence. I'm handing out a couple of pages of statistics that reflect the impact abusers have on children and reflect what victims tell us every day in our work. Not only is there overlap between those who abuse their intimate partners and those who abuse children directly but in addition to infliction of physical pain abusers say to the victim so no one else can usually hear, if you leave me I will kill you or if you leave me I will get the children and who will protect them then? Simply stating that courts need not consider joint custody when domestic abuse is in evidence is a remedy that does not provide any more protection than current law provides for victims. I'm also handing out a legal memo that demonstrates how Nebraska courts ignore or diminish evidence of domestic violence. The memo cites a recent Supreme Court case where the court determined there was no abuse of discretion in ordering custody to the father even though he had a Class I misdemeanor conviction for assaulting the mother, had punched the mother twice, once while the mother drove with the child in the car and there was a witness and one more time when there were no witnesses. There was no discussion of whether the child court correctly considered the evidence of domestic abuse. This will no longer suffice as the way courts determine custody in this state and LB 654 simply doesn't address the problem. In the last case I'll mention very quickly and one that I worked on as an intern with the Nebraska Court of Appeals as a law student at Creighton in the nineties, the majority opinion upheld the custody award to the father who was guilty of three prior convictions of assault against the mother. I had to help write the majority opinion against my better judgment, but I was a student so I didn't have much choice. But I'll always remember that when the opinion came out I was relieved to read the dissent by Judge Hannon. He stated, "In my opinion, any man who has three times assaulted his wife to the point of being convicted of assault is a violent

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person...I do not think a court should award the custody of young children to such a man, particularly when the children's mother is not unfit." Judge Hannon foresaw the need to redesign our custody laws. LB 654 doesn't address it and doesn't do it. We do ask this committee to perhaps study this as an issue to address custody problems when domestic violence is not an issue. Clearly the folks here today are having real struggles with how to work with the parents. We do want you to take a look at the next bill that we'll be talking about, LB 322, that will provide the desperately needed safety for domestic violence victims and their children. Thank you. I'm happy to take any questions.

SENATOR BOURNE: Thank you. Questions for Ms. Muir?
Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Ms. Muir, thank you for your testimony today. I'm trying to reconcile the difference between what I see in your written testimony here and the bill, LB 654. In the third paragraph of your written handout you state, "Simply stating that courts need not consider joint custody with domestic abuse is in evidence, is a remedy that does not provide any more protection than current law provides for victims." On page 3, lines 23 and 24, this would be in 4(a), the court may place the minor child in joint legal custody only after conducting a hearing in open court and specifically finding that joint legal custody is in the best interest of the child. Then on line 27-28 in the middle there, it says the court need not consider joint legal custody or joint physical custody if it finds credible evidence of abuse inflicted upon any family or household member. Your concern outlined in paragraph 3 would seem to contrast with the actual provisions of the bill as I've stated. How do you reconcile that difference?

TARA MUIR: I've neglected to bring a copy of the bill up but can you repeat the last item you did read?

SENATOR FLOOD: And I'm referring to page 3, beginning on line 26 for the record. The court need not consider joint legal custody or joint physical custody if it finds credible evidence of abuse inflicted upon any family or household member. The bill, in my opinion, directly addresses the

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very position that you raise in your testimony and I specifically point to the beginning of the third paragraph.

TARA MUIR: Okay.

SENATOR FLOOD: Do you still have the same concern given the provision of the bill that I just read?

TARA MUIR: I certainly do and that's why I quoted it and maybe I wasn't clear. Thank you for your patience and thank you Senator Foley.

SENATOR FLOOD: Sure.

TARA MUIR: I quoted "need not" because clearly having that in situations of domestic violence and you'll hear more of it today in some of the quotes I read to you about situations victims are in and the statistics. Simply stating as a matter of public policy in our state law that courts need not consider it just gives judges discretion that they can or they can't. They need not...shall not is the word usually used when you want to be very strong in the law that when there's evidence of domestic violence. We'd love to see it say shall not consider joint custody.

SENATOR FLOOD: What if you have a situation where both parents on some certain level can be found to have compromised the safety of their children whether through neglect or abuse or sexual abuse, whatever, the horrific happening in fact was. The word shall not really takes the quote of the balancing act that it has to do in some unfortunate situations, wouldn't it?

TARA MUIR: Well, if you're referring to both parents are unfit, is that pretty much the point you're getting at?

SENATOR FLOOD: There's often a gray area between unfit and negligent or both could use a lot of parenting classes.

TARA MUIR: Right.

SENATOR FLOOD: You know that.

TARA MUIR: Sure, absolutely.

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SENATOR FLOOD: Yeah.

TARA MUIR: I would say there's provisions in the law that when the case is...judges have discretion to send that to juvenile court and perhaps make the children state wards until one or the other parent gets enough services, gets enough education to be able to heal enough from whatever substance abuse or other issues they have going on to be the custodial parent again.

SENATOR FLOOD: Are you comforted by the fact that this bill even though it does make a...and you may agree, a significant change in the way we view child custody still maintain that the burden is on the judge to do what's in the best interests of the child?

TARA MUIR: Well, we're very comfortable with the best interests of the child standard. That's...

SENATOR FLOOD: Which doesn't change under this bill.

TARA MUIR: Right. No. And what I'm testifying to is simply that if we're going to be adding language about domestic abuse and how to treat families who are dealing with those issues it's not in this bill. A statement that a judge need not award joint custody in those cases isn't strong enough. The next bill will be discussing, I think, very clearly, very succinctly gives judges lots of guidance to really deal with those kinds of cases.

SENATOR FLOOD: Thank you very much for your testimony.

SENATOR BOURNE: Thank you. Further questions? Senator Foley.

SENATOR FOLEY: Thank you, Senator Bourne. Ms. Muir, thanks for coming again today.

TARA MUIR: Do you need your copy back? (laugh)

SENATOR FOLEY: No, I've got another one. Thanks (laugh). Would you agree that there are many divorces in Nebraska where there's not even a hint of domestic violence abuse?

TARA MUIR: I haven't seen statistics or research. I can

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talk about some of the...

SENATOR FOLEY: But that does occur, doesn't it?

TARA MUIR: Absolutely. And I think in a general way, what we've sometimes talked about is national studies that reflect that 31 percent of women have a physically or sexually violent episode in their life at some point...

SENATOR FOLEY: But in those instances where there's not even a hint of any of that,...

TARA MUIR: Um-hum.

SENATOR FOLEY: ...why wouldn't we want to allow a court the discretion to order joint custody despite the objections of one of the parties?

TARA MUIR: That's a great question and I know in previous years we've tried to address that question by saying, we do think domestic violence is very prevalent and that the...

SENATOR FOLEY: I understand that but setting aside that when that's not a factor in the divorce,...

TARA MUIR: Um-hum.

SENATOR FOLEY: ...why would we want...why would we not want the judge to have that discretion?

TARA MUIR: I think some other people who will testify will really get to that issue. But joint custody is best when parents, as you've heard testimony, put the children's best interests ahead of their own, aren't already fighting or have reconciled the differences, have agreed to move on and agree to joint custody. When you have that element that the two parting parents can agree to work amicably, that's a great situation for the kids and that's when joint custody can be best...

SENATOR FOLEY: But it also gives great leverage. Current law gives great leverage to one of the parties to just simply say, your Honor, I object. And then the discussion ends.

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TARA MUIR: Yes. Because it's not in the best interests of children if the parents can't even agree on how to make the decisions about their child.

SENATOR FOLEY: We were told that 40 states have something similar to this. Is there something different about Nebraska, why we can't have it too?

TARA MUIR: I guess I'd question it. I have an expert who's done a lot of research on the number of states and what kind of joint custody they have. And she'll be coming up to talk to you, that we think it's significantly less than 40 that actually have presumptions. We've got a couple of charts she'll pass out to you.

SENATOR FOLEY: Would there be some way of melding the concepts in the next bill that we're going to hear into this bill to try to work these two issues together?

TARA MUIR: What we advocate in the next bill, LB 322, is that you can only have joint custody when there's parental agreement and that's pretty much the trend we do see in states is you can have joint custody, the parents have to agree. So I don't see much melding but we do address some of the same definitions that we definitely make a clear definition of joint legal custody versus joint physical custody and that's desperately needed in the law to have it in the statute. And it seems that every year we get hung up on these kinds of issues and not put some of the other things that are in the bill that do need to be done.

SENATOR FOLEY: Thank you.

TARA MUIR: Thank you.

SENATOR BOURNE: Thank you. Further questions? Senator Flood.

SENATOR FLOOD: Ms. Muir, I have some additional questions and I thank you for your being so patient. Have you ever...as an attorney, have you ever engaged in the private practice of law?

TARA MUIR: I did for a little while right after law school, yeah.

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SENATOR FLOOD: So is it safe to say that you've done some family law while engaged in,...and you've done a dissolution of marriage?

TARA MUIR: Yes, did two or three of those and I should clarify. In my current role as legal director at the coalition we did receive a grant to coordinate with the Nebraska State Bar Association's volunteer lawyer project where we're going to be helping provide technical assistance and...

SENATOR FLOOD: And I appreciate that.

TARA MUIR: ...coordinate with family law attorneys so we're...

SENATOR FLOOD: Have you done that so far? You haven't started that...?

TARA MUIR: Oh, no, we have.

SENATOR FLOOD: Oh, okay, good.

TARA MUIR: Past two years almost.

SENATOR FLOOD: Would you agree with me that the way our system is set up, it's adversarial in nature with regard to family law?

TARA MUIR: Absolutely, I'd agree with you a hundred percent.

SENATOR FLOOD: Do you think that the rule of the judge must follow when one parent doesn't agree to joint custody, lends itself to that adversarial spirit in the court system in family law?

TARA MUIR: No, I wouldn't agree with that. I think because we have to focus on the best interests of the children, forcing people into continuing to have to make decisions together about their children is not good for the children. It keeps that...

SENATOR FLOOD: Well, I guess my question would be in light

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of, you know, it's easy to focus in on the custody but as a practicing attorney you're aware that in any dissolution with children there is more than one issue. There's child support, division of property, assets, division of debt, division of, you know, joint legal, joint physical, sole separate custody, credit card bills. And attorneys in the state, would you agree, when they sit down with their client and advise a client on all of the different ramifications of their decision, whether or not to enter into a stipulation and agreement? They force people to weigh these decisions in light of, you know, of the outcome and child custody and child visitation and support that quite possibly giving one parent the option to close a door to something that might be beneficial lends itself to a very adverse proceeding? That's a compound question and I object to my own question (laughter).

TARA MUIR: That's okay because I pulled out a couple of themes I can talk to you about. First of all, when we have all these other issues going on in a dissolution, I would argue that the best interests of the children have to top them all, have to. They've got to be more important than property and your credit card debt.

SENATOR FLOOD: Sure.

TARA MUIR: And how they develop and how they progress through their life is much more important than who's going to pay the \$600 Visa bill.

SENATOR FLOOD: And who makes the decision on what's in the best interest of the children?

TARA MUIR: The judge.

SENATOR FLOOD: Do we handcuff the judge and we disallow that judge from saying joint physical custody is in the best interest of the child when we give one of the parents the right to opt out of that possibility?

TARA MUIR: I believe there's a recent case and I'm sorry I can't cite it. It was last fall that clearly alluded to the fact, judges' hands are not tied. They can award joint custody over the objection of one parent and the state and the law kind of reflects in the rarest of cases. But it

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seems to be coming more and more normal so if we followed what case law is doing currently, it's okay.

SENATOR FLOOD: So essentially this bill would codify what the court has already ruled in your opinion. And if we're in line with...

TARA MUIR: It would but what we're going to make sure we make clear to the committee is that's not what other states are doing.

SENATOR FLOOD: Okay. Well, I appreciate your testimony and you're very informative. Thank you.

TARA MUIR: Thank you.

SENATOR BOURNE: Thank you. Further questions for Ms. Muir? Seeing none, thank you. Next testifier in opposition? And, again, we're making use of the on-deck area. The opponents? Welcome.

ERIN FOX: (Exhibits 7, 8) My name is Erin Fox, E-r-i-n F-o-x. And I'm passing out a handout that actually has state approaches to joint custody and just general custody and also a Law Review article dealing with recent trends in custody. I'm here to oppose LB 654 because it's out of step with current trends in custody law and fails to adequately provide guidance for judges to determine what is really best for children. Custody legislation across the country has trended away from imposing joint custody without parental agreement because forced joint custody is often not in the best interests of the child which should be and is the focus of custody decisions. I'll highlight three types of states that illustrate a spectrum of varied resistance to joint custody taken from an article that I'm having distributed. For several states, actually disfavor joint custody in their statute and in their case law. For example, Vermont's custody of statute reads, When the parents cannot agree to divide or share parental rights and responsibilities, the court shall award parental rights and responsibilities primarily or solely to one parent. This was reinforced by the Vermont Supreme Court which has reversed divorce decrees ordering joint custody absent parental agreement out of concern that the imposition of joint decision-making responsibility upon unwilling parents cannot solve the

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problem of fighting parents and risks placing a child in the middle of constant and harmful disputes. At least seven states give political lip service to an affinity for joint custody through language of preference that does not rise to a presumption similar to the proposed LB 654. Even in states expressing such preference, often the actual custody analysis must follow the traditional best interests test and the preference is essentially impotent. Five states said to have a presumption in favor of joint custody often simply favor a parental agreement for joint custody, for example, California, Maine, Mississippi, Nevada, and Oregon. The Nebraska Supreme Court has frequently and consistently expressed disapproval of joint custody and finally, even in the few states, at least seven with joint custody language rising to a presumption, statutes contain other rules that diminish that presumption and actually do divide the spheres of parental responsibility such as a strong presumption in Florida mitigated by requiring an award of primary residence and other methods of creating parenting plans that actually sort of dissolve the idea of joint custody in its traditional form. Therefore the proposed preference is not only out of step with a national trend, it fails to address problems that even the strongest presumption for joint custody states have addressed which is domestic abuse as Ms. Muir pointed out. And that's all I have.

SENATOR BOURNE: Questions for Ms. Fox? Seeing none, thank you. Next testifier in opposition?

JIM GORDON: Chairman Bourne, members of the Judiciary Committee, my name is Jim Gordon, G-o-r-d-o-n. In 31 years as a practicing attorney here in Lincoln and across the state of Nebraska I have had many, many family law cases involving custody. What we usually hear from children, especially younger children when asked about their choices for custody they tell us, I want to live with mom half the time; I want to live with dad half the time. I want to live with both my parents all the time. And that, however, unfortunately, is simply not possible. So we have to deal and the judges have to deal and the courts have to deal and our clients, the parents have to deal with what to address, how to address, what the children would want if they were given the choice of making a determination. Our Supreme Court has dealt with it. They say that joint custody is reserved for only the rarest of cases and in those rarest of

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cases it's usually the case, the situation where both parents can cooperate and agree and communicate and collaborate in making decisions in the best interest of their children. That's the perfect case; that's the rarest of cases according to our Supreme Court. And, unfortunately, I have seldom, if ever, seen a workable situation where the parents have not at the outset agreed that they were going to make those decisions in the best interests of their children collaboratively with communication with good sharing and exchange of information. So, Senator Foley, I believe you asked about Senator Brashear's bill compared to LB 654 this year. I tried to look at them side by side last night. They are fairly similar but they are not identical. The one thing that they both do is to remove from the current state of the law the expression which is in the current law that says that the joint custody can be ordered regardless of any parental agreement or consent. I would suggest to the committee that if there were no parental agreement or consent it's difficult to understand or envision a case in which that might happen. However, Judge Burns did determine that here in Lancaster County District Court, the case to which Ms. Muir testified just several months ago. He found absent a parental agreement there be joint custody, that there would be joint custody in that case. And I wish I had the citation. I didn't think to bring it either but that was the first and only situation which I'm aware in which a court has ruled that there would be joint custody absent an agreement of the parties that there should be. In this bill, LB 654, the silence on whether or not there should be joint custody absent some parental agreement I believe creates a bit of a quicksand for attorneys, clients, and the courts in determining what is going to happen and what is the state of the law. LB 654 does recognize the value of the parents agreeing to jointly make the decisions according to a parenting plan that's been provided for. And, by the way, I'll just state this right now, I think the best way to get to joint custody is probably through mediation, not through negotiation and not through litigation. That's another bill at another time but I'll just make that as an aside. The concern that I have is absent some agreement worked out by the parents themselves. If you try to cram down joint custody, I don't believe that it does eliminate the conflict. I believe it just buries it. I think that if you try to impose joint custody where there is no basis of

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agreement, there's no understanding between the parties that they will be able to agree and to communicate it's not going to work in the best interests of the children.

SENATOR BOURNE: Thank you. Questions for Mr. Gordon?
Senator Flood.

SENATOR FLOOD: I thank you for your testimony. I appreciate what you said about mediation and just for the record, what kind of success have you seen with mediation between parents versus the negotiation style?

JIM GORDON: Well, I believe there are three words ending in ation that address people in divorce. One is litigation which we discourage as best we can and negotiation which is two attorneys usually working on behalf of their clients. And mediation where it's the parents themselves who are sitting at a mediation session. The role of the mediators is to facilitate the discussion between the parents. And I've suggested to clients who I have in mediation, I have suggested when I have been a mediator, set the picture of the children on the table between the two parents and say, okay, this is what we're going to talk about today. Now talk about that. We'll come back another time to talk about the things with dollars signs in front of them. In answer to your question, one of the things that mediating parenting plans provide for is remediation in the event of a failure of that plan so they're not going to court on modification. They're going back to the mediation center or back to the mediation table to address again what they built on initially which was that parenting plan, you know, through the process of mediation. I think it may be too early to tell exactly what the percentage ratios are and I wouldn't be able to cite you the statistics in any event. I know from experience having either had clients that have gone through mediation and have gone back to remediate an issue or being the mediator when I was called back to remediate an issue and it works, absolutely.

SENATOR FLOOD: What do you think of...and I'm new to this but it was my understanding the state of California requires mediation before you can get into court and have any type of a hearing or some kind of litigation and, in fact, they hold it against the party that refuses to cooperate with mediation. What do you think of that type of...?

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JIM GORDON: I'll address the first part. By district court rule in Douglas County, Rule 4.3 they do have mandatory mediation before you can have a hearing, not a hearing, your state trial on the issue of custody or parenting time or the like. So it's worked there for years. Frank Goodroe who is the court administrator in Douglas County is now the court administrator for the Supreme Court and I'm guessing that we will see more of that in more counties across the state. I hope that we will. I think it's a good thing. The one thing I probably would take issue with is if you compel someone to go to mediation I question how good the result is going to be because they haven't bought into the process. They may see that it's good once they get there but you're actually compelling somebody to do what is probably in their own best interest and in cases that we're talking about, in the best interests of the children. And I'm not sure that compulsion is the way you want to get them there.

SENATOR FLOOD: Thank you.

JIM GORDON: Thank you.

SENATOR BOURNE: Further questions for Mr. Gordon? Seeing none, thank you.

JIM GORDON: Thank you.

SENATOR BOURNE: Next testifier in opposition? Are there any other opponents to this bill? Are there any neutral testifiers? If there are, make your way forward to the on-deck area. Welcome.

SUSAN ANN KOENIG: (Exhibit 9) Hello, Senator Bourne, members of the committee. My name is Susan Ann Koenig, K-o-e-n-i-g. The information I'm giving you is just, tells you a little bit about my background because I want you to understand that I come here to speak about the practical applications of LB 654 because we've been talking a lot in theory and hearing a lot from people's hearts and about people's very sad experiences coming from bad behavior of other parents. And I so appreciate the intentions of the introducers of this bill and Senator Foley's concerns about how can we make things better for children in our state. But I tell you from those of us like Mr. Gordon and myself

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whose opinions I would echo, this is not what this bill would do. I don't think I have enough time here today to talk to you about joint physical custody so I'm just going to limit my remarks, just if we only look at the presumption or the favoring or first consideration to joint legal custody. It's important that you understand what it means in practice when two parents have been given joint legal custody. You've heard a lot of myths stated here today. You've heard, you take a parent away if there's not joint custody. You heard you lose the emotional support of a parent if you don't have joint custody. You've heard there's only one parent if there's not joint custody. Those are all myths and I'm happy to speak to that question you had, Senator Foley, of what can we do to make this better if we're not doing this because I really do think there's some very specific things that we could be doing. What joint legal custody has to do with are the major decisions for a child, major...medical, educational, health. What that can look like is where is our five-year-old or six-year-old going to go to kindergarten? Can I have this allergy shot be done two months from now? Braces, no braces? What about changing day-care? These are major. They are also day to day and when you have people who do not have excellent communication which is...it's universally recognized that that's the best time to have joint legal custody. What happens? As one of the proponents said, you go back to court. Judges will be deciding these things. Lawyers like me will be having lots more business. Children will suffer from the delays and the increased conflicts with their parents. This is not the way to fulfill these intentions. And I think the way is to require specific parenting plans like we've had in Douglas County for years where you have, you address these issues about notice of medical decisions, access to information about your children attending events, very specific times, and we already have laws to enforce them. So I appreciate the intentions of this bill but this isn't going to do it. So I would love questions because this is what I do every day and have for over 20 years (laughter).

SENATOR BOURNE: Thank you. Questions for Ms. Koenig? We have a taker. Senator Foley.

SENATOR FOLEY: I would suggest to you that it's not just a myth, that there's only one parent in the life of a child

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when the child is denied access to the other parent when he or she wants to have access to that other parent.

SUSAN ANN KOENIG: I appreciate that, if access is denied then one parent is removed. Imposing joint custody does not give access. What gives you access is a court order that says you have time starting at 4:35 p.m. on Thursday afternoon until 6:07 whatever day it ends and if that parent doesn't show up that's why we have not only our contempt laws but we also have laws that allow you to come in and get specific enforcement of your parenting time and come another time. Now if a parent is going to violate that whether it's joint custody or sole custody, yes...

SENATOR FOLEY: And in the real world they do.

SUSAN ANN KOENIG: ...and they will do it if there is joint custody or they will do it if there is sole custody. That's the myth that somehow changing the title is going to make people start complying with court orders. No, judges who enforce them will get both parents to be involved. And if they're not they should be punished and they should be rigorously punished. But changing the title won't do it. That won't do it. The intention is so good. We all want the same thing. We all want both parents to be involved but by saying that both of you have to agree to which school this child goes to, how is that going to be best for the child when they disagree? It's going to be August and this child still hasn't gone to Kindergarten Roundup because she doesn't know where it's going to be.

SENATOR FOLEY: Tell us a little bit more about these parenting plans that are mandated in Douglas County....

SUSAN ANN KOENIG: Oh, they're wonderful. They're complex and they take more work. You no longer see in Douglas County a court order that would say something like liberal visitation or every other weekend or Friday through Sunday. It doesn't look like that. These are the kinds of issues. I will tell you in my office I have clients fill out an eight-page questionnaire to identify everything that they might want in a parenting plan and among the things will be how much time, when, every holiday, and if Valentine's Day is important to you, if Halloween is important to you, all of that. Participation, attendance at children's activities

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whether it's your parenting time or not. Of course, you should be able to go to their basketball practice, to every soccer game, to every school concert or conference. To me, these are no-brainers and I tell my clients, if you're not going to agree to these kinds of things you probably have the wrong lawyer. And I think that that's how most family lawyers practice who use parenting plans and we have for a long time in Douglas County. So access to information, access to their children so that if you get a parent who has been violating that, now instead of just saying they're not letting me have my visitation or they didn't tell me when a medical appointment was, you're likely to have a lot of violations and that is the kind of thing that can constitute a material change of circumstances and warrant a change of custody. So that's why it's important to have it be very specific. The other beauty of the parenting plan is because of its specificity the parents don't have to engage in a lot of conflict or a lot of discussion. There's no debate about it. It's very, very clear. Another aspect of some parenting plans are how the parents will communicate. Will you provide cell phone numbers to one another? Will you, when you go out of town will I have an address and know how my child can be reached. What about phone access? I mean, they're very thorough and so when, you know...

SENATOR FOLEY: And we can have all of that with joint custody.

SUSAN ANN KOENIG: You can have it with joint; you can have it with sole but that is not what we're talking about here. What we're talking about is who should have...when is it in the best interests of children to have a requirement that both parents agree on major decisions without having to go to court? And my experience tells me and that's why our courts have been ruling the way they have on joint custody as it's not going to be the ordinary case that you want to be forcing parents to come back into court. The best folks to give joint custody to are the ones who come in and say, we've always agreed on parenting issues. We probably always will. I know we're going to want to discuss them and we're willing to go to court because we think it's such a remote probability that we'll ever disagree.

SENATOR FOLEY: I think Ms. Muir told us that the case law is gravitating more toward the use of joint custody if I

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heard it correctly. Would that be your experience as well?

SUSAN ANN KOENIG: That we're seeing more of it?

SENATOR FOLEY: Yes. I think she said that case law is moving more toward the use of joint custody.

SUSAN ANN KOENIG: I can't speak for outside of Nebraska but in Nebraska I'd have to agree with Mr. Gordon that unless you have agreement of the parties, I think that it would be very rare to have a judge impose it because judges know, you know. Joint custody implies excellent communication, the ability to make joint decisions together so you're not going back to court because that's what you want to avoid. Going back to court is bad for our courts but it's bad for children because there's nothing like litigation to get the conflict between the parents to increase and the children suffer.

SENATOR FOLEY: Sure. Thank you.

SENATOR BOURNE: Further questions? Senator Aguilar.

SENATOR AGUILAR: Yeah, I think we can both agree that when it comes to noncustodial parents there's good players and there's bad players. My concern at this point are for some of the good players out there that are deprived of their rights, never had an opportunity to be part of an agreement, if you will, to where they have some say-so in the medical care of their children and where they go to school. My concern is therein, what I'm hearing and the question I want to ask of you is, the opposition seems to not care about that parent. Would you comment on that at all?

SUSAN ANN KOENIG: I'm not sure I understand the question but if I...

SENATOR AGUILAR: The opposition seems to not care about the good player noncustodial parent that only wants an opportunity to have a say-so in the child's...

SUSAN ANN KOENIG: Yeah, I...yeah, great, okay, I hear your question. I think that what we're doing is that's not...we're speaking just to this bill. Now if you come to the family law section of the bar and you say, help us

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develop some legislation that will provide greater protection, then we could look at whether or not we need to strengthen our language requiring parenting plans. Because one of the problems that sometimes happens is that if the lawyer...frankly, if the lawyers haven't done their job with excellence, if the financial resources of the parties are limited or if the judge does not do his or her job, you end up with these vague orders that set up the noncustodial parent for being abused by the custodial parent.

SENATOR AGUILAR: So you would agree with my concern that there are situations out there where that exists and the noncustodial parent may not have the funds to go back to court and correct the situation.

SUSAN ANN KOENIG: Right.

SENATOR AGUILAR: What do we do about those people?

SUSAN ANN KOENIG: Well, it's you know, I think we have...it's a complex question but I think the first is you start off by insisting that judges only enter orders that are detailed, clear, specific, with the interests in mind that you don't know whether or not these parties are going to be cooperative or not so make it easy for them. Tell them how it's going to have to be so that we don't have these questions of children not having both parents in their lives.

SENATOR AGUILAR: And I couldn't agree more and that's a great way to look at the future but it doesn't address the issue of the past, of the good dads that are out there, some of which I'm sure are here today...

SUSAN ANN KOENIG: Sure.

SENATOR AGUILAR: ...that have the same problem, that are experiencing these problems and have no recourse.

SUSAN ANN KOENIG: Yeah, and the second issue that you raised is one of economics and we're doing a lot of things in Nebraska now to try to provide greater access to legal services. But I've brought many an action for a specific parenting plan to improve and clean out these old court orders that are out there that are inadequate...they're

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inadequate for children, they're inadequate for parents. And they're bad...actually, they're bad for custodial parents too because it gives rise to conflict when you don't have specificity and clarity.

SENATOR AGUILAR: Therein lies the problem.

SUSAN ANN KOENIG: Yeah.

SENATOR AGUILAR: Thank you.

SUSAN ANN KOENIG: Thank you.

SENATOR BOURNE: Senator Flood.

SENATOR FLOOD: Briefly, and I appreciate your testimony. You've got more years of divorce practice than I do but it's been my impression and especially listening to your testimony, one of your primary and chief concerns about the court awarding joint custody when one of the two parents is not in favor of it is that they'll continue to be in court and in court and more court and it's been my limited experience when I do a divorce and I leave that courthouse and one parent hates the other parent. And joint custody was never on the table because one of the parties didn't want joint custody and then that child support payment kicks in and that noncustodial parent doesn't see his or her child anymore, that I'm in court three months later and I'm in court six months later and I am working on a case right now from 1989. The kids are almost out of the house and I'm still representing somebody that got a divorce when I was in ninth grade. In fact, she called my office this afternoon. Doesn't it seem that it's either the glass is half full or full. If we try to bring out the very best in parents, maybe we'll be in court less than this adversarial, let's bang our heads against the wall. And my views seem to be in conflict with yours and I'm interested in how you react to that.

SUSAN ANN KOENIG: Yeah, I guess I'm hearing you say that by imposing joint custody that's somehow going to reduce litigation? And first of all, you're going to be having it litigated upfront and then you're going to have it litigated again if it's imposed and not working. So I'm seeing lots of work for me, you know, seriously, I...

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SENATOR FLOOD: Don't you see litigation when both parties leave or one parties leave and they're absolutely upset like a father who doesn't get the custody he wanted because the other party would not agree to joint custody? Don't you continue to litigate that in your 20-plus years of, 25-plus years of service?

SUSAN ANN KOENIG: Do I think angry parents litigate more? If that's the question, absolutely. So if they're going to be angry parents, why would you impose joint custody on top of that thereby having, you know, a geometric increase in litigation? It doesn't make sense to me.

SENATOR FLOOD: But would a good attorney...now from your resume I can only imagine you are dynamite when it comes to this and you do a great job.

SUSAN ANN KOENIG: Let the record reflect (laugh). No, (laughter) thank you, (inaudible)...(laughter)

SENATOR FLOOD: And I was just thinking, if you were on the other side of a case I'd give you whatever you wanted but I would think that a good attorney that walks out of court with a joint custody order, with the help of these parenting classes that are developed could help make this transition and you sound like you're an advocate for your client as much as you are for the family. Do you see where that may influence the way I see it? You know, with quality attorneys like you out there working towards the goal on joint custody?

SUSAN ANN KOENIG: Right. I would like...don't mistake my position on this bill with my philosophy about joint custody. I believe in the philosophy of joint custody. I believe that in an ideal world, this is what every child is able to have.

SENATOR FLOOD: And I appreciate you saying that. I...

SUSAN ANN KOENIG: You know, it's great when, you know, but I will tell you, people who are married together have difficulty deciding when this child starts kindergarten, whether this child gets the allergy shot, and whether or not we ought to pull them out of Kindercare day-care.

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SENATOR FLOOD: And, you know, to be honest with you, my focus is more on the physical side of the custody rather than the legal.

SUSAN ANN KOENIG: Right, and I wish we...yeah, I would love to talk about that another day. Yeah.

SENATOR FLOOD: I mean, I wish we had a whole other hour to talk physical because...

SUSAN ANN KOENIG: Yeah, in fact, I've probably overstated (inaudible)...

SENATOR FLOOD: But I appreciate your testimony. Thank you for coming.

SUSAN ANN KOENIG: Yeah, okay. Thank you.

SENATOR BOURNE: Further questions for Ms. Koenig? We have one...

SUSAN ANN KOENIG: Oh, I'm sorry.

SENATOR BOURNE: Senator Foley.

SENATOR FOLEY: You made it clear. You like joint custody.

SUSAN ANN KOENIG: I do.

SENATOR FOLEY: You don't like this bill.

SUSAN ANN KOENIG: That's right.

SENATOR FOLEY: What can we do to encourage more joint custody absent this bill?

SUSAN ANN KOENIG: That's a great question and it's a complex one. One of the things that we can do is we can take a look at...there's this whole huge economic piece that we haven't really talked about but it just relates more to the physical custody piece. And one of the things that we could look at if we wanted to talk about not having that economic disincentive which Matt Higgins of Cohen, Vacanti & Higgins also known as the fathers' rights law firm who was

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quoted earlier in the testimony today, I know what Matt was talking about there. What he was saying was, if you agree to give one more day a week to the other parent, you have the potential under the right set of findings and facts and judge and opposing party, the potential is that a parent, let's say a mother's child support received could go from \$900 a month to \$200 a month, \$900 to \$200, that kind of a dramatic decline. Now, one might ask the question, well, isn't she just being greedy and she wants that \$900? One could ask the other question, isn't he just being greedy? Otherwise, why doesn't he pay the \$900 and she'll give him the extra day? So there is this huge discussion to be had which I don't think we have time for today that surrounds that. But I think looking at that issue would be very beneficial because I will tell you that what can happen...let me tell you what I've seen happen. For the woman who says, I'll give you that extra day and I'll live with the \$200 a month. I'll agree to that because you know what? Okay, I think that this is a good time sharing arrangement for our child. There is nothing that makes him take his parenting time. There is nothing that makes him share paying for the soccer fees, paying for summer camp, buying any of the clothing, buying any of the school supplies. Do you begin to see the agronomic repercussions here?

SENATOR FOLEY: That's where the whole parenting plan comes in then at that point.

SUSAN ANN KOENIG: Yes, and also providing some support for what the intention of the Legislature is. If a parent says, I'm going to give more time but I don't have any assurance that they're going to pay because trust me, you don't want parents exchanging receipts for how much the football helmet cost. Okay? Because they say, well, we'll share those expenses. That is a nightmare. It's impractical, it doesn't work. And who are more at risk? First of all, women as a group tend to be earning less money. Secondly, they tend to be making the primary home for the child. They tend to be the ones who've been the consumers in the way of shoppers. They tend to be the ones who've been taking the children to medical appointments. And what ends up happening is they can't afford to support their children and the children suffer when some of these arrangements are made. It's one of the risks and it's why there will be some

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attorneys out there say, don't...you know, don't go there. Don't look at this because this is what could happen to you. I think there are possible solutions to that where children will benefit, where parents will pay their fair share of support, whatever that is, and I don't mean noncustodial parents paying more than they need to if they're sharing equally in the financial responsibility. But that's a very important issue that I think should be looked at.

SENATOR FOLEY: Thank you again.

SUSAN ANN KOENIG: Thank you.

SENATOR BOURNE: Thank you. Thank you, Ms. Koenig.

SUSAN ANN KOENIG: Thanks so much.

SENATOR BOURNE: Other testifiers in opposition? Are there any neutral testifiers? Senator Beutler has waived closing. That will conclude the hearing on LB 654. Senator Schimek to open on LB 322. As Senator Schimek makes her way forward, could I get a show of hands of those folks here testifying in support of this next measure? Again, roughly ten in support. Those in opposition? I see five. Are there any neutral testifiers on this next measure? I see one. And, again, we're going to make use of the on-deck again as Ms. Muir already is. Thank you. Senator Schimek, welcome.

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SENATOR SCHIMEK: (Exhibit 13) Thank you, Senator Bourne and members of the Judiciary Committee. I'm pleased to be with you today to introduce LB 322. I might tell you, I just sent my staff member to find out if my committee is done because we're supposed to have an exec session so I think we're a little speedier than you are today possibly. I brought LB 322 to you because I was approached by a constituent group, the Nebraska Network of Domestic Violence and Sexual Assault programs and realizing the importance of the subject matter I have been sort of peripherally involved in the matter for some time. I gladly agreed to carry this legislation. The goal of LB 322 is to make the safety of children and victims of domestic abuse the highest priority

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when a court is asked to decide which parent is best to have custody of a child. Current Nebraska law allows courts to weigh domestic violence abuse as only one factor among many in determining the best interests of the child. A review of appellate cases reveals that this factor is not given much weight, if any at all, and often as a result, abusers win custody away from the one person who has tried best to protect the children. To me this is not acceptable. Given what we know about domestic abuse, we must change the result because this is a growing problem in our communities. Research and studies on this topic are abundant. They show that in at least 50 percent of child abuse cases a spouse is also being hurt. Batterers may use custody to punish, control, marginalize, or hurt their partners and the children and are more likely to contest custody than the general divorcing population. Fathers who batter the mother are twice as likely to seek sole custody of their children as nonviolent fathers. And, believe me, I don't believe this is a gender issue but those are the only statistics that are out there, that I have. Under the provisions of LB 322 when a court finds credible evidence of domestic abuse a rebuttable presumption is created that the perpetrator of that abuse will not be awarded sole or joint custody of the child. The primary purpose of rebuttable presumption is to promote the safety and development of children by reducing their exposure to domestic violence through custody arrangements. It reflects the state's interest in promoting the welfare of children and a child's interests to be free of abuse and neglect. Secondary to that paramount goal, presumptions can provide additional guidance to the judiciary in these cases. Nebraska is in an excellent position to take advantage of other states' experience with custody presumptions. If I could get a page, please. LB 322 represents amalgam of all the other state approaches tailored to the needs of our state. After reviewing the varied approaches that the other 24 states have taken and that's the handout that you're getting now, the success or failure of certain types of provisions and the recommendations of commentators examining these presumptions, LB 322 was created. In conclusion, this bill will not solve all of the problems with custody in our court system but it will help the courts identify cases that involve actual domestic abuse, not high conflict cases with the mere allegation of abuse. It will take awareness to the next level by providing a mechanism courts can use to keep

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our children safe. There will be people testifying today who have specific expertise in working with victims and abusers as well as attorneys who have researched this proposals and attorneys who have practiced family law for many years. I would be happy to answer questions you might have and the experts who are here today are also available to answer your questions. And my office did receive a letter from Voices For Children in favor of this proposal which I thought I'd have distributed to the committee as well. With that, Mr. Chairman, I conclude my remarks. (See also Exhibits 10, 11, 12, 16)

SENATOR BOURNE: Thank you. Are there questions for Senator Schimek? Seeing none, thank you.

SENATOR SCHIMEK: Thank you very much, appreciate your time.

SENATOR BOURNE: First testifier...I'm sorry?

SENATOR SCHIMEK: I appreciate your time. Thank you.

SENATOR BOURNE: Absolutely. Thanks for coming in. First testifier in support? We have received a number of letters both for and against the measure and they will be entered into the record.

TARA MUIR: (Exhibits 14, 15) Good afternoon, Senator Bourne and members of the committee. My name is Tara Muir, T-a-r-a M-u-i-r. I'm the legal director for the Domestic Violence Sexual Assault Coalition here in Nebraska. I'm here today on behalf of the network of 22 programs and shelters across the state, who serve the victims of domestic violence and sexual assault, and to express our full support for LB 322. Thank you, Senator Schimek, for introducing the bill; Senators Bourne, Pedersen, Combs, and Aguilar for cosponsoring it. Two parts of this bill are critical towards effective implementation and keeping victims safe. First is the definition of domestic abuse. It is thorough but narrow. Acts that would give rise to a protection order must be shown plus a pattern or history of other acts that abusers use to exert power and control over a victim must be shown. The power and control wheel that I've handed out, it's the blue page if you've gotten that. When it does come around, this serves as the basis for this definition. The inner circle represents tactics abusers often use. And the

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outer circle represents the sexual or physical violence the abuser deems necessary to keep a victim in fear and to control every move. I would ask you to keep this wheel in front of you as you listen to survivors who break their silence today about the abuse and for yourself hear and see the patterns that are so common. We don't want to talk about every high conflict divorce as Senator Schimek was talking about, only those where this definition fits. The second part of this bill that is critical is the clear and convincing standard for rebutting the presumption that an abuser should not get custody. Presumptions are not effective in states without this higher standard for the rebuttal evidence. Attorneys and survivors in other states that I have met are frustrated with a preponderance of the evidence or credible evidence standard they report and cases show it, that courts continue to do what they've always done, ignore or diminish the evidence of domestic abuse but often finding the presumption was rebutted and thus award batterers custody. North Dakota is the one state that amended its statute and created a clear and convincing standard for rebutting the presumption. An attorney there reports judges now take the issue much more seriously and victims and children are actually being protected, the goal of the legislation. One more piece is important, page 11, Section 4, subsection 5 where a court is directed to use a predominate aggressor analysis if it finds both parents are abusive. This is an important section as abusers are highly skilled at denying that victims needed to use self defense and that sometimes victims do fight back. That does not make the victim an abuser and using the predominate aggressor analysis will assist the court in making an accurate determination of which party is the abuser. After four years of our opposition to joint custody proposals and it's not because we don't care. We care very much about children and we care very much about both parents helping kids get through their lives but the custody proposals that have come ahead don't protect victims. LB 322 is finally a bill we can fully support and we ask you pass it out of committee right away. Thank you. I'm happy to take questions.

SENATOR BOURNE: Thank you. Questions for Ms. Muir? Seeing none, thank you.

_____: I have a question regarding the language

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used in (inaudible).

SENATOR BOURNE: I'll tell you what,...

_____ : Is that inappropriate at this time?

SENATOR BOURNE: If you want to testify either as a proponent or opponent, come forward and you can say your comments at that time and we also will take neutral testimony at the very end. And so your comments are most welcome then. And, again, we're asking people, we're on proponent testimony. Those folks that are proponents should be making their way forward and signing in and if you're an opponent, you'll have your turn here shortly. Welcome to the committee.

JANE DOE #1: Hi. I'm just going to tell you a little bit about my experience after separating from my son's father who was abusive.

SENATOR BOURNE: Did you care to state your name or if you...

JANE DOE #1: I would prefer to remain anonymous so my son doesn't have any backlash from it.

SENATOR BOURNE: Understood. Okay, not a problem. Thank you.

JANE DOE #1: Initially, when I called the police after being assaulted I was contacted by CPS and was told that I would have my child taken away from me if I did not leave my abuser. When I did leave, my child was handed over to his abusive father for visitation without a second thought. I guess I don't understand the reasoning behind that as I was told that I was supposed to protect my children from the violence. Yet when I did, my child was sent right back to the person who was the violent one without any kind of regard to the child's well-being after that point. People who divorce or separate because of domestic violence is a completely different situation than people who do so because of irreconcilable differences. This is not a normal situation of a couple that can't get along. Abusers are different. This is who they are. They are about violence and power and control. They continue their abuse with their

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next girlfriend or wife and children are still being controlled and manipulated as a means to control their mother after she has left. The children are put right back in that situation at the abuser's home. The children are like possessions to them. They don't want us to have the power or control that is viewed from their perspective in making the decisions regarding the children. I've been told many times that I am not the boss and he has told my child that I am not the boss, and he doesn't have to do what I tell him. My child has been exposed to R-rated movies and video games with violent and sexual content since before he entered kindergarten. Even in grade school his teachers were disturbed by the graphic descriptions he was telling other kids about the movies and videos he watched at his dad's house, and the teachers would have to intervene and cut him off. He was taught that fighting is the only way to settle things and my child would come home and show me moves that his dad taught him and that were not about self defense. I could give you several incidents but I'm only going to tell you about two specific ones due to the time constraints. I used to monitor their phone conversations on another phone line due to some of the inappropriate things I would hear my child say in conversations with his father. One time his dad called to tell him in graphic detail how he had baited a squirrel in the driveway and laid on his belly with his gun through a crack in the door and shot the squirrel right through the eye and how there was lots of blood. When my child asked what he did with the squirrel his dad said he threw it out in the alley and he would show my child when he came over. He was around nine years old at that time. Another time when my child was around five I was watching a movie where people were dancing and my child proceeded to tell me how women dance with no clothes on. This was something that his dad had told him and he said his dad would tell him that he would take him when he got bigger. These were just a couple of instances of the mindset of abusers with their children. When my son developed increasingly violent behavior I had him see a therapist. His dad freaked out and didn't want our child to say anything to the therapist and told him not to talk to him. He tried to convince him we were trying to turn him against him, trying to go to court to get the notes from the therapist. Thankfully, the judge didn't allow that. Then he would tell my child that I had abused him when he was little and that I didn't want him and continued to badmouth

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me to my child. My only recourse to that was just telling my son it did not happen because I would not tell him about his father's past indiscretions because I don't feel the child need to be put into that position. So I just, you know, I just basically had to defend myself by saying it didn't happen. He's constantly berating my child. Nothing he ever did was good enough. He was on medication for ADHD. His dad convinced him we were trying to drug him and poison him and told him not to take anything that I had give him to drink or fix him for dinner and convinced him to try to do it himself because he made it sound like I was trying to poison him and he didn't want me slipping drugs to him. In conclusion, I've tried for years to do something legally to protect my child from this but since there were no physical marks nobody would do anything. The therapist said it was one of the worst cases of emotional and mental abuse that she had ever seen. If someone had stepped up and realized how damaging this is to the children my child wouldn't be suffering the emotional damage he is today. My child has had self harming behaviors and talks of wanting to kill himself. I'm hoping you'll see the damage this causes children and make an effort to save other children from going through this. When an abused parent leaves a situation, that doesn't mean the abuser stops his behavior and the children still need to be protected from this.

SENATOR BOURNE: Thank you. Are there questions from the committee? Senator Foley.

SENATOR FOLEY: How much access does the boy's father have to him?

JANE DOE #1: Standard visitation every other weekend and Wednesday evenings.

SENATOR FOLEY: And otherwise he's with you, is that right?

JANE DOE #1: Yes.

SENATOR FOLEY: Thank you for coming today.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. We appreciate your testimony. Next testifier in support?

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BOB MOYER: (Exhibit 17) My name is Bob Moyer. I'm executive director of the Family Violence Council which coordinates efforts in Lancaster County to stop family violence.

SENATOR BOURNE: Could you spell your last name for the record?

BOB MOYER: M-o-y-e-r.

SENATOR BOURNE: Thank you.

BOB MOYER: Including domestic violence and child abuse as it relates to domestic violence. I'm also chair of the Statewide Domestic Violence Offenders Standards Review Committee of the Nebraska Domestic Violence Sexual Assault Coalition. This committee reviews batterer intervention programs to see if they comply with standards for working with court referred domestic violence offenders. Attached with my printed testimony is documentation for statements that I'm making in this testimony. For too long the state of Nebraska has failed victims of domestic violence and their children when they attempt to leave abusive relationships. Too often the state has failed to understand that these abusers are not just bad intimate partners, they are dangerous people. They are not people who sometimes act badly but who routinely act badly in intimate partner relationships because it's who they are. And the children of these people are at great risk because of this pattern of abusive behavior. LB 322 seeks to help remedy this situation. The bill differentiates between those who occasionally are abusive and a certain kind of individual that we call abusers who are so dangerous to victims of domestic violence and their children. The bill makes this distinction by requiring that the applicant show not only a violent act but also that this well recognized pattern of behavior exists that is demonstrated in the power and control wheel. In the past 20 years we have learned a lot about abusers. We know that abusers see themselves as victims. They use the tactics from the power and control wheel of minimization, what I did wasn't that bad or isn't that bad as some people do, denial. I didn't do anything wrong...you would do what I would do if you were in my situation and blaming. Your actions caused me to behave this way to justify their actions. In doing so, they

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present themselves as victims who are entitled to behave the way they do. They want to talk about their feelings but the problem is with their behaviors. Abusers consistently are: controlling, entitled, so self-centered they can't form normal intimate relationships. Manipulative including often portraying a good public image; skillfully dishonest, they create conflict and make people pick sides. They're unwilling to accept responsibility for their actions. They internalize responsibility instead. They are often good early in relationships. Some groom victims in conceptually the same manner as child sex offenders groom their victims. They are most dangerous after separation. Most of their victims and those trying to help the victims, including law enforcement who have been murdered or killed after the victim leaves the abuser. They are dangerous parents. They consistently are underinvolved with a limited sense of age-appropriateness such as you heard from Laura. They constantly undermine the other parent's authority, constantly interfere with the other parent's parenting. They use children as weapons to regain control over the victim. They see children as personal possessions through which to gain their selfish ends. They are divisive in the family. It's not in the interest of the abuser to have the children think alike so they breed favoritism, disharmony, and dysfunction. They are at high risk to perpetrate child abuse including sexual assault and incest. But they are good under observation. They can behave and look good for an hour or some other short period of time such as during visitation. And they rarely are able to improve as parents post-separation. The impact of this abuse on the victim and the children is devastating and long lasting. This abuse shouldn't be tolerated in divorce, custody and visitation considerations. LB 322 provides the way to determine if an abuser is appearing before the court and to act to ensure the safety and health of victims and their children.

SENATOR BOURNE: Thank you. Are there questions for Mr. Moyer? Seeing none, thank you. Next testifier in support?

PAM MCCARTHY: (Exhibit 18) Good afternoon, Senators. My name is Pam McCarthy, M-c-C-a-r-t-h-y. I am the volunteer and education coordinator for YWCA Omaha Women Against Violence program. The Women Against Violence program has offered counseling, advocacy, and education on domestic

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violence for the last 25 years. I am here to speak in support of LB 322 by offering information regarding the effects of domestic violence on children. While children can sometimes be the hidden victims of domestic violence it is important not to forget that children in abusive homes are caught in the web of abuse as much as the nonoffending parent. Watching, hearing, or later learning of a parent being harmed by a partner threatens children's sense of stability and security typically provided by their families. It is important to note that not all children are affected by domestic violence in the same way. Children differ in terms of their resiliency. Research has helped us to begin to identify factors in terms of how children adjust. Generally these factors are related to three things. The first one is the nature of the violence, the intensity, the proximity, the duration, the child's age, gender, developmental stage and the child's immediate and broader social context such as the relationship with the parent and other social connections. Keeping that in mind, some factors to consider is first, perpetrators do traumatize children in the process of abusing their adult partner. Researchers have estimated that 3.3 million to 10 million children witness assaults by one parent against another every year. The majority of studies support domestic violence as the strongest indicator of child abuse with 50 to 70 percent of child abuse cases also involving domestic violence. We also have perpetrators who either intentionally or unintentionally physically injure the children during the attacks and their adult partner when the children are often caught in the middle. The perpetrator also uses children as another control tactic, threatening violence against the child, engaging the child in the abuse or holding them hostage. Second, the immediate and long-term effects of domestic abuse can be profound and devastating and can include physical, emotional, and cognitive damage. Problems among children who witness domestic violence include a greater likelihood of aggressive and antisocial behavior, traumatic stress reflected in higher levels of depression and anxiety, and slower development of cognitive skills. Children who witness domestic violence in their homes are at a higher risk for growing up to be abusers or victims of domestic violence. Finally, and in conclusion, often the most effective way to protect the children is to protect and support the nonoffending parent, holding the perpetrator, not the abused

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party, accountable for the abuse is critical. This protects both the nonoffending parent and the child. This provides them with emotional well-being, safety, and access to community services. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Ms. McCarthy? Seeing none, thank you. Next testifier in support? (See also Exhibit 19)

SHAUNA SHIMMIN: Hi, I'm Shauna Shimmin, S-h-a-u-n-a S-h-i-m-m-i-n. I'm just going to tell you a little story about my life. My life took a major change just a few months after I said I do. I became pregnant with my third child just a few months after I got married. Not only did my husband, Walter, to become abusive to me but he also became abusive towards his two stepchildren. Walter was arrested for third-degree assault after he and a friend shoved me into a bedpost even though I was four months pregnant. He was ordered to take anger management classes. I did take him back because he had threatened to hurt my children and me. Later on he did abuse my oldest daughter. When I went to call the police he threatened to kill all of us. After the birth of our first child, Walter filed for divorce. When I was moving out he assaulted me again. He was arrested again for third-degree assault. He was ordered once again to take anger management classes. He started up with his threats and dropped the divorce. I went back to him once again. We had our second child. The threats and the abuse continued. His mom started to also threaten me. She would tell me not to get the police involved because she knew all of them through her job in the ER and they would believe her over me. I went through years of abuse. When I called the cops nothing would be done because Walter would call his mom and she would talk to them. During our marriage my husband made me sign an affidavit to have his assault charges be expunged off his record. I never thought the courts would allow this to happen but once again the odds were in his favor and the assault charges were expunged. After six years of being abused I finally got up enough courage to get a divorce. He knew that he would get custody of our children so he didn't protest the divorce. After our divorce he still had a lot of control over me. He continued with his threats and verbal abuse. I realized the only way to get on with my life was to get the court's permission and leave the state. When he caught wind of

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this, he filed for custody of the children. He then tried to get me arrested. I went to his house to pick up our daughter and he pulled me in the house. He was on the phone with his mom and told her to call the police, I was trying to break in. I got my daughter and tried to leave his house. He then shoved my head to the wall several times and slammed my hand in the door. I finally got out and called the police. The next day I filed for a protection order. Even though I had a doctor's and a police report I was denied a protection order. Shortly after that I took my children and moved out of state. I've been out of the state for two years and I'm still fighting for custody of my girls. The problem I'm having is the courts will not allow me to use the abuse that occurred to me and my children during the marriage. The only information I'm allowed to use is the stuff that happened since our divorce. If this bill is passed, I hope I would be allowed to use the abuse that occurred during our marriage. I believe in my heart this is the miracle I've been praying for to ensure my children will be kept safe.

SENATOR BOURNE: Thank you. Are there questions? Seeing none, thank you. Appreciate your testimony very much. Next testifier in support.

KASEY PENDERGAST: (Exhibit 20) Hello, my name is Kasey Pendergast.

SENATOR BOURNE: Could you spell your last name, sir?

KASEY PENDERGAST: Yeah, it's P-e-n-d-e-r-g-a-s-t.

SENATOR BOURNE: Thank you.

KASEY PENDERGAST: My name is Kasey Pendergast and I grew up in a house that consisted of physical, sexual and verbal abuse. And I think a lot of people experience this. And I want to make clear that what I'm saying now isn't because I'm angry and trying to lash out to get at the divorce that my parents have gone through and the hardships that have happened in our past but because I see the fact that there's so much abuse that goes on. There needs to be something done about it and they deserve the protection that they've fought for and that they've gathered up the courage to try to get away from because I think that from what I've seen in

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my own experience by when my mom left my father, it just continued on. He was allowed to keep on coming to the door and she was hit because he was allowed to come to the door to pick up the kids and then there still wasn't any protection even after that. It's just everything is so vague about protection. I'm in support of LB 322 because it clearly states to protect and give them everything, you know, the right to protect the children which there is none of right now in the court system unless the woman is walking in with two black eyes and a broken arm which isn't always the case. It's usually he said, she said. I'd rather see even if there's a chance of something being well, maybe she's lying. Well, we should give them the benefit of the doubt over say, over just letting it keep on happening. That's my stance on that.

SENATOR BOURNE: Thank you. Are there questions for Mr. Pendergast? Seeing none, thank you. Appreciate your testimony. Next testifier in support?

JODEE PENDERGAST: (Exhibit 21) I brought some handouts. I'm Kasey's mother. My name is JoDee Pendergast, P-e-n-d-e-r-g-a-s-t. I'm a survivor of domestic violence. I was married for 12 years before I got up the courage to leave my husband. He was emotionally and physically abusive to me and to my children. I didn't realize until the end what the effects it had on my children. My oldest son is 20 years old and he's an addict alcoholic. He broke into a business before I got the courage to leave and has vandalism on his record and he tried to outrun the police. Right now he's not followed probation because he continues to use drugs. There's an arrest warrant out on him and he's in California, Florida, he's finding himself. I have no idea where he's at. It's really affected him. My other children, my three older ones my husband had adopted. When I met him he seemed to be the perfect person, a father for those children. I continued on with him and had two children and then one by accident that's just turned three years old when I was getting ready to get up the courage to leave him. I've gone through the last two years now of a very traumatic divorce. He assaulted me last March and because we were in the middle of all this the police officer did nothing. Took a picture of my bruise. My daughter was there and my 16-year-old. They said let the courts handle it. I did get a protection order and he says that he didn't

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hit me, that we're lying. And the judge did listen when he fought the protection order and it was upheld. We've had a lot of situations in this two years of temporary visitation. He was awarded the Wilson v. Wilson. Every other weekend despite my niece who lived with us for awhile and my five older children writing affidavits of the abuse that's happened. And then he had some incidents of where he kept the children when he was not supposed to keep them and he neglected them medically and there was a lot of other concerns. And anyway, then the visitation was changed again and limited but he's not been held accountable. The children haven't been listened to. We've been traumatized through all this. I couldn't afford our attorney. We've had to go to Legal Aid. And since, I've gone to the University of Omaha. I've moved from Hastings here to Lincoln and I'm pursuing my master's in social work and that's what's in some of that. And he has been diagnosed that he has an unstable impulse disorder. And there's recommendations from two psychologists that he have supervised visitation but he just started seeing a psychologist during the last six months that's talking about parent alienation and so all of it's on the judge's desk and we're waiting to hear what is decided but I just feel like I'm still being victimized. And if this bill goes through maybe another family might be saved from what we've gone through this last two years not to mention, you know, the years before that that I did nothing.

SENATOR BOURNE: Thank you. Are there questions for Ms. Pendergast? Seeing none, thank you. Appreciate your testimony. Next testifier in support?

TRACEY LATTURE: Yes, my name is Tracey Latture and I appreciate being able to testify and share my views on LB 322.

SENATOR BOURNE: Could you spell your last name for the record?

TRACEY LATTURE: L-a-t-t-u-r-e.

SENATOR BOURNE: Thank you.

TRACEY LATTURE: I am a mother of two children, one girl, age eight and one boy, three. My daughter's father and I

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agreed to have court order visitation to reflect what's in my daughter's best interest. This was decided mutually because of her father's addiction to alcohol. This arrangement has given me a huge responsibility to ensure that they have the best relationship possible. Early I attended the Children's Right Council meetings, a group of noncustodial relatives, usually fathers and grandparents to help me gain another perspective. I've attended fathering seminars encouraging my daughter's father and possibly a friend to attend whenever possible. I've attended counseling to help set healthy boundaries for myself and my daughter, the later proceeding the importance to me. Unfortunately, by following boundaries set by our counselor who previously was a Child Protective Service worker for HHS, you know, his visits are sporadic but I still believe it's best. It has allowed me to gain an awareness that he does love his daughter to the best of his ability. He's aware that he is always welcome to contact her. I'm comfortable in sharing experiences we had with her and in reminding her how important she is to both of us. With the ability to set healthy boundaries such as showing up on time, being sober, exposing her to healthy people I've gained the confidence that her father is not a threat and I can effectively convey this message to her. My experience with my son's father has been a complete opposite experience for all of us. My relationship with this man was one that included his wife and two daughters. This was not a sexual relationship nor one that I would consider a social arrangement. We exchanged labor on my farm and on residing his home. After about a year of involvement with this family, this man decided our relationship would become sexual. It only then became apparent to me that their marriage was not a traditional marriage. I terminated this relationship as best as I could concerning the best interest of the three girls. This man agreed to exit our lives if I would not press charges and not pursue child support. All this changed when I was advised by the Lancaster county attorney's office to establish paternity for access to medical records for my unborn child as a result of applying for Medicaid. I'd like to read the judge's order. It says, parts of it, it says, "While I do not condone the Blackstock's extramarital sexual activity, there is no evidence that it has not had or will have a detrimental impact on Nathan. Indeed, there is no evidence that a reasonable parenting time with Mr. Blackstock will result in

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any harm to Nathan." I know I'm running out of time so I'm going to read some highlighted. I wish you could read the whole thing. It says, "Whether this visitation can be done, it depends on whether Ms. Latture is going to cooperate." She says, "I understand Ms. Latture's skepticism regarding Mr. Blackstock's motivation in seeking parenting time but the entitlement to parenting time has never been dependent on the reasons for wanting it." The bottom line is he does not pose objective or serious threat to his child or safety and if I can accept that, that will do fine. Well, he'd never had a relationship. He was not in the child's life. Okay. Thank you.

SENATOR BOURNE: Are there questions for Ms. Latture? Thank you. Next testifier in support.

TRACY GRINSTEAD-EVERLY: (Exhibit 22) My name is Tracy Grinstead-Everly, T-r-a-c-y G-r-i-n-s-t-e-a-d-E-v-e-r-l-y. Briefly, I'm an attorney from Omaha, Nebraska. I was in private practice for four years out of law school with Legal Aid representing exclusively domestic violence victims for three years after that and then for the past three years I've been in my current position with the Domestic Violence Council of Omaha as the director of their court watch program. I'm not speaking on behalf of the bench or any particular judge today but in my work I can assure you that I've had the opportunity to observe not only but to speak with many judges, particularly in the criminal court arena. Personally and through our trained court monitors our program has spent hundreds of hours observing judges in the courtrooms. I not only obtained but tracked domestic violence statistics from police, prosecutors, probation officers, and other criminal justice system officials. I've had the opportunity to observe the criminal justice system official working hard to give judges full information on the background and the dangerousness of domestic violence offenders for sentencing. In Douglas County, we even have special units trained for domestic violence not only in our police department, our probation but in our prosecution. The reports that I've handed out...I've handed out just two copies of several that we've printed and published, provide tangible data from the criminal justice agencies giving them guidance which the judges use to enable them to give a more effective and efficient response to domestic violence. And I've seen some positive changes from some judges as a

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result. However, there exists a significant gap in the civil arena. We see grave inconsistency on the bench because some judges are not sure what information in domestic violence cases is relevant or how much weight to give it which is something we cannot afford when it comes to the safety and welfare of children. Judges want to maintain their judicial independence and discretion and they want to do the right thing. In my experience, they welcome more guidance from reliable resources in making important decisions such as this one. The rebuttable presumption created in this bill is just that. It gives judges tools in dealing with abusive parenting without taking away discretion and reasonableness and it protects children. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Ms. Grinstead-Everly? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne, and I want to thank you for your testimony today. I really appreciate it.

TRACY GRINSTEAD-EVERLY: Um-hum.

SENATOR FLOOD: You are a lawyer,...

TRACY GRINSTEAD-EVERLY: I am.

SENATOR FLOOD: And I appreciate what we're working to accomplish with this bill. For the record, though, if this bill passes and at some point an attorney is looking at the legislative intent down the road, would you help me to find credible evidence. And I should have asked this question in the last bill but in your opinion, you know, and I'll show you where it's used in here. There's a list of definitions but page 9, line 7(b), credible evidence of domestic abuse inflicted on an intimate partner. If the court finds credible evidence of domestic abuse...now I'm a little concerned that we're using a standard that's not defined in the law and that we leave this all open to interpretation. And maybe if you don't want to speak to this, that there's some folks coming up that I think are attorneys that could address this. But for the benefit of the record, you or somebody coming up, if we could put some parameters in what you see as credible evidence. Maybe we should change this to a legal standard that's recognized by the court currently

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because I see a problem coming down the track if this is passed when on page 11, line 15, the rebuttable presumption requires clear and convincing evidence which is a burden of proof that's rooted in the law.

TRACY GRINSTEAD-EVERLY: Right.

SENATOR FLOOD: Do you see value to maybe better defining what credible means or if you don't see value in that, wish to pass on it or maybe help define what credible means for the legislative intent.

TRACY GRINSTEAD-EVERLY: Well, I would love to pass on that (laughter). But I would also say that in addition to the fact that other people down the line will be talking to that and will be addressing that, that I do agree that that's one of those areas that judicial discretion still needs to be imposed. And this bill sets out a lot more parameters for the judges. It really sets a guideline for them and much more so than the current law which is one of the things that I really love about it and I think that judges would like about it. But it still allows them that judicial discretion and reasonableness that they have currently.

SENATOR FLOOD: And the concept, I agree with the idea of setting one burden here and the other burden here. And for the purpose of the record, one burden low, one burden high. Because clear and convincing is certainly I would consider a higher burden of proof. What if we were to use, what's the lowest burden of...?

TRACY GRINSTEAD-EVERLY: The preponderance of evidence?

SENATOR FLOOD: ...preponderance of evidence. Would you respond to...how would you feel with using that burden of proof?

TRACY GRINSTEAD-EVERLY: Actually somebody after me is going to address the burden of proof issue, if you don't mind (inaudible). I apologize for that.

SENATOR FLOOD: Okay. That would be fine. Thank you very much. I appreciate it.

SENATOR BOURNE: Thank you. Are there further questions?

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Seeing none, thank you. We've been joined by Senator Chambers from Omaha. Will the next proponent come forward?

SUE ELLEN WALL: Good afternoon, Senators. My name is Sue Ellen Wall, W-a-l-l. I'm an attorney in private practice. I started off as a wife and full-time mother who worked in the PTA and over the years of watching children, determined that children are about as well off as their mothers are so I spent eight years as the director of the Women's Commission here in Lincoln. And during that time, became a member of the board of the Domestic Violence Coalition and served as its treasurer for six years and that's when I learned my lessons about domestic violence. Whatever you think about it looking at it from the outside you can be fairly well assured that it looks quite different when you're on the inside. This bill is an excellent addition to the statutes of the state of Nebraska. It puts down in black letter law for lawyers and judges in the family law section, not the criminal law section, much broader and more accurate definitions of domestic violence currently. Domestic violence is defined pretty much if he doesn't have a knife at your throat or a gun at your head you're not being abused. And so much of the abuse is not physical. As the young man said, if you come in with two black eyes and a broken arm, maybe somebody will believe it. But so much of it is emotional and psychological. The broken bones heal, the bruises fade, but that psychological and emotional damage often never ever goes away. And the impact it has on children is horrific and unfortunate. We see it repeated generation after generation. There are two issues and I have not studied this bill thoroughly. I have been very aware of its progress but not intimately involved. Senator Flood raised what is credible evidence especially (inaudible) domestic violence occurs when only two people are present or two people and some very small children. And I think that is an issue that we need to figure out how to identify and how to define much more clearly. The absence of legal standards often causes serious problems in the ability to implement a law. And such things as, you know, maybe a friend of hers can testify that she hasn't seen for three years because her husband won't let her out of the house or family members. Maybe there are no checks in the family that she's ever signed because she doesn't control the money. There are a bunch of things that you could think about that might help bolster, and I did have a case where I

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had a client whose husband said, you know, when the last baby was six months old I'm getting a divorce and if you try to get the kids I'll kill you and she believed him. We came in four years later trying for modifications and the judge says, well, all I have is her word for it. Well, in the Old Testament it took two women to testify to the testimony of one man. And I felt like I was sort of back waiting for Moses to come across the courtroom door. We need to find ways to help judges understand that and it is a problem because there will be people who either think she is making it up and, you know, batterers are very charming people. They have to be to get somebody to live with them long enough to pick on them. And so it should never surprise you that he's a nice guy or she's a lovely, charming woman. They can still be extremely abusive inside the home. So the issue of credible evidence is one. The other one in Section 6, subsection 2 is the issue of material change in circumstances. Divorce is one of those times, as you've heard today, when the leaving can bring on the most dangerous time in a relationship. It is when people die, mostly women. And so chances are, if it doesn't come up, if he doesn't fight for custody she's the issue of...the violence will not come up. Attorneys don't know what questions to ask. They say, has anybody ever hit you? No, he shoved me. He pushed me into a wall, he knocked me down the stairs. But, no, he never took his fist and hit me. So that's one of the concerns. In my understanding and from watching some of my own clients and I have had a couple from the laptop program that Ms. Muir referenced earlier. After a victim has been away from their batterer for a year or two depending, they gradually get less afraid and they are more able, and if you can talk to them properly and bring out the evidence about the abuse then is when they can raise it. That in my world is a material change in circumstances. She's no longer or he's no longer afraid he's going to die then, but right now you can't get a judge to believe that or even understand what's happening. And the degree to which batterers use the court system to continue the abusive and power and control behavior after the divorce is a serious problem that virtually nobody recognizes is going on but is documented in some of the national literature.

SENATOR BOURNE: Thank you. Are there questions for Ms. Wall? Seeing none, thank you.

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SUE ELLEN WALL: Thank you.

SENATOR BOURNE: Next testifier in support?

JIM GORDON: Chairman Bourne, members of the Judiciary Committee, my name is Jim Gordon, G-o-r-d-o-n. I've been an attorney in private practice here in Lincoln for the last 31 years, have been involved in custody cases and domestic relation cases throughout those entire 31 years. I've tried family cases in many of the counties of the state and in doing so I represent both mothers and fathers, occasionally children and am myself a divorced father of two daughters. My service includes a decade or more as secretary of the Family Law Section of the Nebraska State Bar Association. During those 31 years I've also tried to be an advocate for the children. I've been appointed by the court to serve as guardian ad litem of both the district court and the separate juvenile court of Lancaster County and several other counties. As recently as 2003 and 2004, I had the privilege of chairing and serving as president of the board of the Child Advocacy Center here in Lincoln. And most recently I was appointed by Governor Johanns to serve as a member of the Foster Care Review Board. This legislative confirmation on that appointment hopefully to occur a week from today. The bottom line is that I am concerned as I am sure you are all concerned about the safety of children generally and in divorce cases, in particular. I believe that LB 322 is the logical next step enabling our courts to evolve in their pursuit of safety for the children of divorce. I believe that LB 322 gives our judges appropriate guidance on how best to do what is safest for the children. There are, for instance, the rebuttable presumptions as several witnesses have testified to. With presumptions like those found in Section 4 of the bill which require clear and convincing evidence to overcome them, LB 322 focuses on the safety of those children otherwise at risk. Any risk of error by the court in determining the existence of those presumptions is greatly outweighed, in my opinion, by the children's interests in being free of abuse and neglect. Twenty-three of our sister states have created these rebuttable presumptions against awarding custody to batterers. Nebraska should increase that total up to 24 states. There are also provisions relating to parenting time or visitation. LB 322 ensures the safety of children when parenting time or visitation with the child is the

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issue. Section 5 of the bill provides a list of the requirements a court can impose to keep the children safe when ordering parenting time or visitations by an abusive parent with those children. And the last element of LB 322 upon which I would like to testify today is subsection 6 of Section 3 of the bill found on page 10, lines 13 to 21. That subsection deals specifically with the issue of joint custody about which you've heard plenty of testimony today and it provides a joint custody or joint legal custody may be awarded only when the parents agree to the arrangement and the court determines after a hearing the joint legal or joint physical custody served the best interests of the child. The sad but true reality is that we simply cannot force people who cannot get along to get along. And unless divorcing parents agree to be agreeable in making decisions in the best interests of their children, those decisions will not get made. By requiring not only the agreement of the parents but also the court's special finding that the arrangement is in the best interests of the children, LB 322 once again protects the children. In doing so, LB 322 favors neither moms nor dads nor does it work against dads or moms. It is for the safety of the children and we must all be in favor of that bias. Knowing as I do the amount of effort which has gone into creating LB 322 I urge the Judiciary Committee to vote this bill out of committee and onto consideration by the full Legislature with your ongoing support for its passage. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Gordon? Seeing none, thank you.

JIM GORDON: Thank you.

SENATOR BOURNE: We've been joined by Senator Combs. Next testifier in support?

ERIN FOX: Good afternoon, Senators. My name is Erin Fox, F-o-x, and I have the enviable position of addressing the burden of proof question. But first, I would like to just clarify. I'm a second-year law student at the University of Nebraska at Lincoln and I clerked this summer at the Domestic Violence Sexual Assault Coalition and this is what I spent my summer researching. So, hopefully, I'll be able to provide you with some information about different state approaches to similar presumptions in the area of custody

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law. First, in 1990 Congress passed a joint resolution recommending that states adopt such presumptions followed by the ABA in '92 or '94 and the American Psychological Association in '94 as well. So there's been encouragement at these types of presumptions just generally. And now to address the language of credible evidence that triggers the presumption is actually the current language in the bill or in the best interest test in Nebraska. There isn't really caselaw interpreting it as such. Sometimes it just says credible evidence and that's basically the judge's job is to determine what is and is not credible. And so I think that judges view it as a preponderance of the evidence standard and so we didn't want to confuse, not confuse but, you know, change the language, make a language change necessarily so it is in line with current language in the bill or in current law. And additionally, by setting forth factors that trigger the presumption, that gives judges guidance that allows them to look at different types of evidence as opposed to just having an evidentiary standard of preponderance of the evidence. So the proposed bill actually informs the idea of credible evidence of domestic abuse with types of evidence that the judge can use to make a finding of domestic abuse that would trigger the presumption. And it actually, even though the standard is preponderance of the evidence along with the factors and that sort of thing, it ends up being a fairly high trigger for the judge to make a finding of domestic violence in order to trigger the presumption.

SENATOR BOURNE: Questions for Ms. Fox? Senator Flood.

SENATOR FLOOD: If we amended this and I'm not saying we would but if...thanks for coming here. If we amended this to preponderance of evidence just to make things more uniform and maybe we went back and addressed the other law that hadn't been there, would you still support the bill? If we changed it to preponderance? I mean, I'm trying to figure out how important that change in words is because I'm concerned about credible evidence.

ERIN FOX: Okay, well, I can only speak for myself, not for the coalition but I think that saying preponderance of the evidence is essentially the same thing as saying credible evidence. In my research that seems to be...I mean, often states don't even specify a burden of proof to trigger the

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presumption or provide actual types of evidence so I would say that preponderance of the evidence is essentially, is the same thing, just different ways of saying the same thing.

SENATOR FLOOD: Thank you.

ERIN FOX: Um-hum.

SENATOR BOURNE: Further questions for Ms. Fox? Seeing none, thank you.

ERIN FOX: Thank you.

SENATOR BOURNE: Next testifier in support?

SUSAN ANN KOENIG: Members of the committee, my name is Susan Ann Koenig, K-o-e-n-i-g. I'm here to speak in favor of LB 322. I really want to acknowledge this committee for its commitment to looking at legislation that is designed to protect children. I could tell from the earlier discussion today that this interests you greatly so thank you for looking at this bill so closely. I was thrilled when I saw LB 322 and for three reasons. First, of course, as I'm sure many of you are, looking to see how well it can protect children. Secondly, because it's really well grounded in an understanding of domestic violence. This was clearly a bill that was based upon the research that's been out there for a year so it's really well thought out. And third, because it's so well written as to make its application very practical. And as you know from earlier discussions that interests me as well. So what I see LB 322 will do is that it will support our lawyers and our judges to both protect children and to know what the standards are to be able to do that, to wake them up to doing it because not all of them are paying attention to this or even having the discussions with their clients in the way that they need to be. I'll go back to how I practice law. In my office if I have a client, we do some preliminary screening for domestic violence and if I think it's a concern my clients fill out a very lengthy survey that looks at all these forms of abuse. I assure you, that's not happening in every law office that folks are walking into to get a divorce. Has he ever hit you? No. Okay, on to the next question. Or if she doesn't volunteer or he doesn't volunteer that they've been a

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victim, the issue doesn't get looked at closely. So I think that this will wake lawyers and judges up to all that should be looked at in protecting children when it comes to domestic violence. This is a real opportunity to take meaningful action to protect children. It's long past due and I'd really urge you to promptly move it forward. I would like to address the question of credible evidence or preponderance of the evidence. I think that our judges will interpret it as preponderance of the evidence and I would not see it as a barrier to moving this bill forward if that kind of amendment were made.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Thank you. Further questions for Ms. Koenig? Seeing none, thank you.

SUSAN ANN KOENIG: Thank you.

SENATOR BOURNE: Are there any other testifiers in support of the bill? No other testifiers in support. We'll move on to opposition testifiers. And, again, we're going to make use of the on-deck area so if you're opposed to the bill make your way forward and use the on-deck area and sign in.

GERALD MOREHOUSE: Should I have signed in twice or is once enough? Because I testified on...

SENATOR BOURNE: No, you need to sign in on each bill but why don't you do that after your testimony?

GERALD MOREHOUSE: Okay.

SENATOR BOURNE: So, again, this is the first opponent testifier.

GERALD MOREHOUSE: Okay. My name is Gerald Morehouse, M-o-r-e-h-o-u-s-e, and I'm here to testify against LB 322. I don't have really a prepared speech but I just had a couple of comments that I wanted to say. In the beginning of her opening, Senator Schimek made a statement that a certain percentage of abusive fathers use custody as a tool to abuse or harass their ex-spouse. I just want to let the record show that that doesn't mean that just because a father wants custody of their child that they're an abuser.

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And I think that kind of is the way some people think in this room. And I never abused my ex-wife or child and I still want custody just as much as her mom does. Also, in the Duluth wheel that they passed around which I believe they reference somewhere in their bill, saying the different types of violence. I just wanted the committee to take note that nowhere in this wheel does it say the word him, it only says her and that implies to me that only men can be abusers and that only women can be the victims. I hope that if we pass a law, it would apply equally to both sexes. And finally, on this bill, I think the problem is that the Domestic Violence and Assault Coalition wants to fix is abuse. I don't see why we have to tie it to custody. It's already illegal to hit someone and just by giving custody, sole custody, to one parent, if you're going to hit somebody I don't think just because you no longer have custody of your child or have a reason to go over to your ex-wife's house that that's going to stop you from doing it. If you're going to hit somebody you're going to do it no matter what type of custody arrangement you have or whatever. So I think we need to focus on increasing the penalties for abuse and stopping that and not trying to tie it into custody and further anger people that are already tied in a custody battle and use abuse as a point to try and take custody away from a person who's just been accused. And also the credible evidence thing that you pointed out, I think if we don't clear that up it could just be used, say, an affidavit of abuse which I could write out right now and have that be considered credible evidence. So allegations is not how you convict people, evidence is. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Morehouse? Seeing none, thank you.

GERALD MOREHOUSE: Thanks.

SENATOR BOURNE: Next testifier in opposition?

ROBERT WATSON: Good afternoon, Chairman Bourne, members of the committee. My name is Robert Watson. That's W-a-t-s-o-n. And I'm a registered lobbyist for fathers' rights in Nebraska. There honestly are parts of this bill that I like and there are parts of the bill that I don't like. I truly believe that the motives of the drafters of the bill were pure and I think that they were trying to give

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the courts a framework to deal with these issues. However, at this point, I believe due to the vague wording of LB 322 not just the credible evidence terminology but adding some terms that I still have failed to find in our law, I'm not an attorney, I'll tell you that now. But I can still do this research and it seems to me we're going to get into battles of affidavits. I mean, 51 percent of the affidavits say he or she did it, 49 he didn't. Does the 51 percent win? You know, I think that basically what we're doing here potentially, although I think it could serve some good, I think you're throwing nitroglycerine on the fire. These people are already embroiled in a huge, huge legal issue, probably the most significant legal issue of their lives. No offense, Senator Flood, but I think, you know, there are attorneys who may or may not benefit from creating problems between these people at this point. I really question whether or not this is going to help children or create huge conflict that hurts them. And that's really all I have to say. If you have questions I'll take them.

SENATOR BOURNE: Thank you. Questions for Mr. Watson? Seeing none, thank you. Next testifier in opposition?

LES VESKRNA: (Exhibit 23) My name is Les Veskrna. I'm the executive director of the Nebraska Children's Rights Council. I'd like to begin by saying that I feel a little dubious about discussing abusive parents and custody of their children when it's quite apparent that being a good parent has never been an important part of the discussion. I am all in favor of having compelling reasons like domestic abuse to exclude or limit contact that dangerous parents may have with their children. My major concern is Section 3 and this is what I am testifying against this bill about which specifies Section 3(6a) which specifies that joint legal or physical custody may be awarded only if both parents agree. This goes back to some of the arguments that we heard about LB 654. And I'm not going to reiterate them except I'd like to say that to allow men to be fathers only with the consent of mothers is a chauvinistic and some might say is abusive as workplace laws that would allow women to earn money only if their husbands or their boyfriends allowed it. I don't think it's fair to children of good parents or morally right to good fathers, to treat all fathers the same because a small fraction of parents are abusive. That just compounds the tragedy of those who are abused. I think it is

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shortsighted that we would not favor strong roles for father even after a divorce or separation since there's overwhelming evidence that absent fathers increase the risk of poor outcomes for children. Little boys become victims of sexual predators and I've attached four local newspaper articles describing how fatherless boys are targeted or they grow up to be perpetrators because they're somehow angry and have missed what a good father normally imparts to them about how to properly treat a woman. The very first male relationship a little girl has is with her daddy. Without that normal experience they tend to have difficulty with appropriate male relationships when they grow up and this can make them more likely to become victims of abuse. At last Sunday's GRAMMY Awards, the song "Daughters" by John Mayer won best song of the year. A line from the song is, "Fathers be good to your daughters for daughters love like you do." So guess what happens if a daughter is deprived of a father's love? Visitation often is prevented or obstructed by a boyfriend or stepfather who thinks the slate ought to be clean and just doesn't want dad around. It's a pretty common theme among noncustodial fathers, they get along well with the mother or their child or children after the divorce or separation until mom finds a new boyfriend or remarries. The really shameful thing is that abusive men enter the household and they have far more parental rights and privileges than the child's own father. I think that our public policy should not entrust our courts to determine the best interests of most children in a priority manner. Our public policies should entrust the court to determine the best interests of the specific child whose custody is in question.

SENATOR BOURNE: Thank you. Questions for Dr. Veskrna? Seeing none, thank you. Next testifier in opposition?

MARK HANNER: Good afternoon, my name is Mark Hanner, H-a-n-n-e-r. Currently, my former wife has two protection orders against her in Sarpy County. She has a domestic violence conviction yet as I understand the bill, my ex-wife is immune to any other provisions of this bill simply because of her custody status. It is my belief that LB 322 would only encourage more behavior that would not only further damage the father-daughter relationship but would encourage by means of zero accountability and/or due process of the accused. I am also very concerned about the one-way

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application of the law. Committee members, I respectfully ask you to vote against LB 322.

SENATOR BOURNE: Thank you. Are there questions for Mr. Hanner? Seeing none, thank you. Appreciate your testimony.

MARK HANNER: Thank you.

SENATOR BOURNE: Next testifier in opposition?

ERNEST KUBR: Good afternoon, Senators. My name is Ernest Kubr. Last name is spelled K-u-b-r and I'm here in opposition to LB 322. The reason for my opposition is pretty much I have lived the other side of the coin. Psychological abuse by my former spouse and physical abuse which was witnessed by half a dozen different people while I was moving some of my belongings out of the house. She filed a false claim of abuse which I had a taped...I was wearing a microcassette recorder at the time to protect myself from just such things. She was trying to throw a piece of...a bag of trash into the back of my truck as I was getting some belongings from the house as I was closing the back of the topper on the truck. It hit her forearm. She claimed abuse, showed an officer a bruise. When I was called in, I played the tape for the officer and he said, I feel sorry for you. You got a long life ahead of you. I showed him the gash on the top of my head from her pushing me into the stringers along the basement steps as I was trying to get some boxes out from under the steps which at the time there were people helping me move. There were half a dozen witnesses to her pushing me and I filed a cross complaint on that. The county attorney's office chose not to follow up on my complaint. Apparently, her word that it didn't happen overrides six witnesses on my side because women cannot commit abuse, according to some people's attitudes. That's the way people have been indoctrinated. Me, I had to produce a tape showing that I did not intentionally hit her arm. The officer told me, if you had not played that tape for me, I would have to cite you because she showed me bruises and she claimed it happened. According to the county attorney's office, when I tried to pursue my claim and wonder why she wasn't being charged with false reporting, they said, well, we have reprimanded this officer because he was not supposed to have taken that tape

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into evidence. It shows that there is just a blatant bias. It shows that the system has indoctrinated people to believe men are abusers, women are not. When none of this could be presented in court because there was no charges filed, there were no charges actually filed. There was no case ever presented. My children constantly complain about her yelling at them, they're not taken in for dental care. I've brought this to the attention of the courts but she is not an abuser. What am I to do? If the same allegations were made against me, I would never be allowed to see my children. That's where I am coming from. That is how I feel and this is not going to change the system until you change the minds of people in enforcing existing laws. Thank you for your time.

SENATOR BOURNE: Thank you. Are there questions for Mr. Kubr? Seeing none, thank you. Thanks for your testimony. Next testifier in opposition? And again, if you're wanting to testify in opposition, make your way forward and please sign in. Welcome, again.

KEN HUGO: My name is Ken Hugo, H-u-g-o, and I am in opposition to this bill. There are some points of this bill that are good and I will not enunciate them. That has already been taken care of. And it sounds from testimony that attorneys have failed their clients in a big way by not pursuing the right questions also. I'm going to have to go through this really fast because there's so many points. I don't see how this bill can get out of committee yet because there's so many things, there's so many inconsistencies in this bill and I'm going to be jumping around. Right now I'm going to page 10 on line 22, and it says in Section 4, the Legislature finds that domestic abuse is a serious and widespread problem. Has the Legislature found this? Is this in the record somewhere that you have found this, do you have this documented on here? I'd like to have that verified. If it is not, that should be stricken. There are many places in this bill where the word shall should be used instead of may. On page 2, lines 12 to 20, there's some very distinct things that have to be taken care of by one parent. You know, anger management doesn't take care of the battering program and things like that and I was just wondering who designs these programs. What group designs these batterers' programs? I see in here that there's only direction directed to one parent to resolve their problems

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but not to the other parent. And I know somebody that's been involved in counseling children in their teens, adults for more than 20 years in three different states. And much of the problems the young girls have isn't just from the abusive father. It is from the mother not taking actions so I guess in here, wouldn't it seem that you would direct the other parent that has a history of that to solve their problems also? There's an example of it also a man that was abused by his dad in Pennsylvania, grew up, married, okay, the couple they have abuse in the relationship. The woman divorces. After a few years she moves to Iowa...no, Wisconsin after meeting a man on the Internet and took the kids...moved to there. Okay, they're there a few years and then the child, the one oldest boy after turning 16, he went back to Pennsylvania. Now the mother is looking on the Internet, finding another relationship. And so isn't it that you have someone with problems, should they not also be obliged to take care of their problems? We keep hearing about the best interests of the children, taking care of their children's protection. How can you say one side needs to have things taken care of and the other one not. So there is...I could visit with anyone here for an hour on these, so many things that are wrong here. The other thing, the mistreatment of an animal here. I mean, if my hamster died in a section, my wife didn't feed it three days and water it three days before she left. And recently, I worked 32 hours straight through and if she were out of town, the hamster died, she could hold the hamster up and say he abused our pet. And bang, she could leave the state and take the kids along with and that would constitute an abuse. There are too many open ends on here. I'm done. And the senators addressing him, that's one of the things definitely is credible evidence because the inconsistencies, the clear and concise is used in some places and not the others. It almost seems conveniently used here and omitted there. And I think that he has some very important questions.

SENATOR BOURNE: Great. Thank you. Are there questions for Mr. Hugo? Seeing none, thank you. Appreciate your testimony.

KEN HUGO: Thank you.

SENATOR BOURNE: Other testifiers in opposition? Are there any neutral testifiers? I see a couple of people are making

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their way forward, neutral testifiers?

_____ : Yes.

SENATOR BOURNE: Okay. If you'd just go ahead and testify and then sign in afterwards. Is there anyone else wanting to testify in a neutral capacity? If so, make your way forward to the on-deck area and sign in, please. Welcome to the committee.

NEAL RAUHAUSER: Good afternoon, Senator Bourne and members of the committee. I have been reading the text of the...

SENATOR BOURNE: Excuse me. Could I have you state and spell your name, please?

NEAL RAUHAUSER: My name, Neal Rauhauser, R-a-u-h-a-u-s-e-r. And I had not looked closely at LB 322 before coming here today. I had a chance to read it while we were listening to the discussion on the bill. And I will say that I have been subjected to everything listed in the definition of abuse except the things that required the abuser to be larger than the victim. My concerns with the bill are specifically the language on page 3, first paragraph. Definitions of words like harassment, stalking, coercion, isolation, mental cruelty, economic abuse. These are all, it seems to me, emotional words. Do you feel that you've been isolated? You know, how do you measure that? How do you know when you've been isolated? And I don't see that being well defined. I think you could make a similar argument for many of the other words here. So that being said, this is, I think, confusing for a judge, confusing for an attorney. You know, how do you go about qualifying what these things are? And absolutely, they happen but how does the state go about setting some rules so they can be easily recognized, easily understood? I don't see that in the language of the bill. I don't believe it exists anywhere else in the Nebraska Revised Statutes. As Mr. Watson mentioned, a lot of these words are undefined. I would also state that this creates cost to the state, creates cost for parents having stuff like this on the books. And as a matter of principle, how far can the state go for correcting these sorts of things? If people are going to willfully put themselves in harm's way and there's a word codependence. I think you can probably find a definition for that. I think we've seen a

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few testifiers here today that are probably subject to that malady. Can the state correct that? I don't think that is the case. I don't think the state wants to be the thought police for people. So that being said, I'll answer any questions anyone has.

SENATOR BOURNE: Thank you. Questions for Mr. Rauhauser? Seeing none, thank you. Appreciate your testimony. Are there further neutral testifiers? Senator Schimek waives closing. That will conclude the hearing on LB 322. The committee will stand at ease for ten minutes and then we will take up LB 128.

RECESS

SENATOR BOURNE: All right, Senator Hudkins on LB 128.

LB 128

SENATOR HUDKINS: (Exhibit 26) Good afternoon, Senator Bourne and members of the committee. My name is Carol Hudkins, H-u-d-k-i-n-s, and I represent the 21st Legislative District. Today I am presenting LB 128 which is aimed at preventing a custodial parent from intentionally interfering with court-ordered child visitation rights. Specifically, this bill makes it a crime to violate the visitation provisions of a valid court order by detaining or concealing a child with the intent to deprive another person of his or her rights to visitation. The bill provides affirmative defenses to prosecution when the accused acted, number one, in the reasonable belief that he or she was protecting the child from imminent physical harm and his or her actions were a reasonable response to such anticipated harm. Number two, with the mutual consent of all persons having a right to custody and visitation of a child, or number three, in a manner otherwise authorized by law. And, finally, the bill allows proof of conviction for unlawful visitation interference to be admissible as evidence in a civil action. Last year I brought a practically identical bill to this committee. That bill used the more generic words whereas LB 128 is now more specific. The hearing for last year's bill had discussion of various issues involved with that legislation. Of particular interest were three concerns

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raised by committee members about the draft language. These concerns were that number one, the language "interferes with" child custody was unconstitutionally vague. Number two, the penalty provisions of the bill created a jurisdictional conflict between civil and criminal enforcement powers and, number three, the problem was already addressed by existing law. After the hearing, I requested an Attorney General's opinion on each of those issues and as the page is handing out right now, the result is a nine-page analysis that concluded that the bill did not contain unconstitutionally vague language, did not create a jurisdictional conflict between civil and criminal process, and was not usurped or superseded by existing state laws. I have done my best to come up with a draft language that is free of technical flaws. Nevertheless, the real debate surrounding LB 128 has never been about language. Rather, it is about basic policy. Right now we have a problem in this state. Custodial parents, men and women alike, are using their children as weapons to harm their former partners. They do this by refusing to comply with valid visitation orders, thumbing their noses at both the parent who is entitled to visitation and the court that issued the orders. This type of behavior is reprehensible. It victimizes both the child and the noncustodial parent. Worst of all, our current system is not effective in preventing it. The men and women who out of pure spite intentionally interfere with court-ordered visitation do so because they know that they can get away with it. They know that the only possible redress for the aggrieved party is to seek a contempt of court order. These efforts are very expensive and time consuming. I have a letter which you all should have now from an attorney stating that a contempt proceeding averages approximately \$2,500. You also should have a third letter from another person giving his feelings on this bill. Our current system victimizes the noncustodial parent twice. First, its ineffectiveness encourages the malfeasance to begin with and then it tells the victim that he or she must go to extraordinary lengths in terms of both time and money for hope of relief. To those who oppose LB 128 I have asked, if you're against criminal sanctions, what is your alternative for addressing this issue? About the only suggestion offered is that the aggrieved party seek mediation. That's ridiculous. Since when do you mediate a court order? If a noncustodial parent fails to make court-ordered child support payments, is

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mediation an option? Of course not. That parent can be charged with a Class IV felony for criminal nonsupport. Why should a visitation order be treated any differently? They are both valid court orders and they both affect the welfare of the child. Last year I warned against using this issue as a gender football and I would offer that warning again today. I don't want to see LB 128 turned into a vehicle for any group to advance its own political agenda. This bill contains an affirmative defense to deal with legitimate fears or allegations of abuse. More importantly, it is gender neutral legislation that applies equally to men and women, to mothers and fathers. LB 128 is not about men, not about women. It's about equity and doing what is right. At least 23 other states have passed laws dealing with visitation interference. It's time for Nebraska to take this issue seriously as well. I would answer any questions.

SENATOR BOURNE: Thank you. Before we ask questions of Senator Hudkins, can I get a showing of hands of those in the audience wishing to testify in support of this bill? There's roughly 13 supporters. Those in opposition? Three. Those neutral? I see none. Possibly. Okay, just maintaining your options. Okay. Questions for Senator Hudkins? Seeing none, thank you. (See also Exhibits 24, 25, 27, 28, 29, 30, 31)

SENATOR HUDKINS: Thank you.

SENATOR BOURNE: First testifier in support?

RHONDA HAMEL: Good afternoon. My name is Rhonda Hamel. That's H-a-m-e-l. I'm sorry, I'm reading from a prepared testimony because I'm pretty nervous. I strongly support LB 128. I am currently in the middle of a child custody battle and neither I nor my daughter's father have ever been accused of any sort of domestic violence. Several months ago I filed for custody but ended up with visitation only. Despite the court order giving me Wednesdays and every other weekend, her father has outright refused to allow my visitation on numerous occasions. My order is very specific and about the weekends I have visitation but this hasn't stopped his interference. I have tried to pursue contempt. However, it is extremely expensive and so far hasn't led to any changes. To be honest, I can't afford to keep doing this and he knows it. If something isn't done, I may never

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see my daughter again. I really hope you pass this bill.
Thank you.

SENATOR BOURNE: Thank you. Are there questions for
Ms. Hamel? Seeing none, thank you. We appreciate your
testimony.

RHONDA HAMEL: Thank you.

SENATOR BOURNE: Next testifier in support?

ERNEST KUBR: Hello again. My name is Ernest Kubr. That's spelled K-u-b-r. I'm here in support of this bill, LB 128. And the reason I'm in support of it is I, too, have had numerous occasions where I've not been allowed to see my children. And that's in direct violation of standing court orders regarding my time with them. I'm given a choice and I have tried on a couple of occasions to file contempt with the court for these infractions among other things. One occasion, I filed...I had approximately 11 different allegations. She admitted to all but one. The judge found her in contempt on one but not the interference with visitation. I have a choice to try and enforce this court order of going back again and again for contempt. And I know numerous people who have done it four or five, six times without a change in their circumstances. I can't afford to do it anymore. I've done it twice. I can't do it again. I have a choice of paying to try and force her to comply with the orders on a regular basis or make my child support obligations and pay my bills. It's an either/or thing for me. Most noncustodial parents want to be fully involved with their children but we've been reduced to visitor status and then the time that we're called visitors we're not allowed to have and there's no finding of unfitness on the part of most parents who are relegated to this status. And then we are, on top of that, having our children taken most of the time away from us. We're subjected to the whims of the custodial parent. In my case, the judge is the legal custodial parent. The judge in open court in the divorce proceeding said, he did not trust her because of evidence presented at the trial but chose to keep legal custody with the court, place possession with her and stated, I'm doing this to hold a hammer over your head, to make sure you do the right thing for these children. When I went back and presented evidence that she was not getting

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them dental care and she was not complying with the visitation orders and other things, I got hit with attorney's fees. He said my allegations, even though I had evidence of this, were petty, bordering on frivolous. How am I to enforce orders if there is no, as he put it, hammer over her head to make sure she complies? I have no recourse. She has no inspiration to try to comply at all with the court's orders if there is not some perceived penalty. I have a perceived penalty if I don't comply as has been stated by Senator Hudkins. If I do not pay child support I could go to jail and be there forever because then I can never get caught up and I'm continually in contempt. How do I get out? I strongly urge you to pass this bill.

SENATOR BOURNE: Thank you. Questions for Mr. Kubr? See none, thank you. Next testifier in support?

THOMAS WOODARD: Good afternoon. I'm Thomas Woodard. That's W-o-o-d-a-r-d. I'm a former foster parent and noncustodial parent of four children, currently Mark who is a subsidized foster child, has been adopted by me and my former spouse. Amitrine (phonetic), Aaron, and Sapphire live with their mom and they're my biological children. Both Mark, Amitrine (phonetic), Aaron, and Sapphire visit me once a week and every other weekend. And since my ex-spouse had filed for divorce on May 12, 2003, which is approximately two years, mom has not had the children at the location where I was told to pick them up at least four times. When I called her cell phone she'd either not answer or either hang up the minute when I said I was here to pick up the children. Mom has been home with the children once when I arrived and refused to answer the phone or the door because her boyfriend left a note on the door, saying I would not get the children for that visit. Another time a half-sister of my biological children which is my wife's child from a previous marriage had been home with the children and had refused to answer the door. The police have been called not only these times that I've mentioned before but they've been called four times and because my ex-wife has refused to allow the children to come on visits. On one occasion when the police were called, my daughter Amitrine (phonetic) which was at the time six years old was able to talk to the police officer because mom refused to let her go and when the police officer arrived she talked to the police officer and he said she wanted to go on the

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visit. Once she said that, the police officer convinced mom to let her go. As we got in the car, she insisted that she had to thank the police officer for coming in and interfering with the fact that mom had not let her go. But on other occasions the police have just told me it is a civil matter. I have not mentioned also that my son, Mark, I went over seven months not able to see him because mom once when I showed up to visit she had the police come to the door and take him away in handcuffs saying he had been abusive because he did not want to go on a visit which was later found out to be untrue. I support LB 128 because this will help solve some of the problems I currently have had with my ex-spouse.

SENATOR BOURNE: Thank you. Questions for Mr. Woodard? Seeing none, thank you. Next testifier in support?

LES VESKRNA: (Exhibit 32) My name is Les Veskrna. I'm the executive director of the Nebraska Children's Rights Council. Divorce is a painful process for all family members but children are often the most adversely affected because most end up losing a parent, usually father, as a result of this process. Our organization has conservatively estimated that they're in the neighborhood of 25,000 to 30,000 children affected by divorce in Nebraska who are regularly or completely prevented by the custodial parent from seeing their father not because of safety or abuse concerns but because of motives that are admittedly selfish or vindictive in nature. This figure comes from comparing the cumulative number of divorces in Nebraska with the frequency of interference with visitation as documented by several published articles in national mainstream journals or books. We used a figure at the low end of the average and I've attached a bibliography of citations to the back of my written testimony. This collection is no means the result of an exhaustive search. Now, since most custodial parents are mothers, most of the research specifically singles out women or mothers. But I agree with Senator Hudkins and that this is not a gender issue. For example, Julie Fulton in a study titled Parental Reports of Children's Post-Divorce Adjustment documents that 40 percent of custodial wives reported they have refused to let their ex-husbands see their children at least once, and admitted that their reasons had nothing to do with the children's wishes or the children's safety but were somehow punitive in

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nature. Dr. Judith Wallerstein and Dr. Joan Kelly revealed that approximately 50 percent of mothers either saw no value in the father's contact with his children and actively tried to sabotage it, or resented the father's contact and may have sabotaged it in more subtle ways. Now this is exactly why fathers are absent from their children's lives. And fathers are often blamed for being absent even when they don't have a right to be present. Custodial parents, given the privilege of complete power and authority must also have the responsibility of facilitating contact and communication with the other parent especially when that's a good parent. When this doesn't happen, it needs to be enforced by our public policies. When our government, its judiciary, and its social service agencies do not respect the importance of noncustodial parents in a child's life, it's easy to understand why custodial parents don't either. Thank you.

SENATOR BOURNE: Thank you. Questions for Dr. Veskrna? Seeing none, thank you. Next testifier in support?

GERALD MOREHOUSE: Hello, Gerald Morehouse, M-o-r-e-h-o-u-s-e, again. My name is Gerald C. Morehouse but most people call me Curt. There is one special person, though, who calls me daddy. Her name is Sidney and she is five years old. My time with Sidney is limited by a court order. There was and is no reason for my time with Sidney to be limited but nonetheless, that's what the judge ordered. Even if my time with Sidney wasn't limited I would still relish every moment I spend with her. Since my time with her is limited, it makes every minute that I do get to spend with her that much more special to both of us. Last year when I testified in support of this bill when it was called LB 855, I told the committee about how I had Christmas Eve with Sidney stolen from me by her mother. I'd like to report what happened after I used the currently available procedures to resolve our issues. I filed a contempt motion in Sarpy County and hired a lawyer after being convinced of how foolish it would be to try to represent myself. After spending over \$2,000 the judge made a ruling that Sidney's mother was in contempt of court and then announced her punishment. No make-up visitation was ordered. She was ordered to pay \$250 of the over \$2,000 I had to spend for lawyers' fees. My time with Sidney was stolen. I took it upon myself to bring the offender to court at my own expense and I ended up worse off than when

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it all started. The currently available procedures for dealing with a person who violates a visitation order put the burden on the victim. The victims of domestic violence have to pay the courts to enforce restraining orders? No, they don't. Police are called and they take action. All we are asking for is for the courts to enforce their orders in the same manner that they enforce other court orders such as child support and restraining orders. If this bill does not become law I will be forced with a decision. The next time my daughter's mother denies my visitation time I will have to decide whether it is more important to try to bring her mother to justice at my own expense or let her get away with emotionally abusing our child by stifling our relationship. It sounds like an easy decision until you realize that she can do it over and over until the decision eventually makes itself when I run out of money. At that point, my daughter will be held captive in her mother's house and I will be powerless to help myself and, more importantly, help our daughter. If you do pass this bill, the time and money burden of going to court will be placed squarely on the shoulders of the offender which is where it should have been all along. I also want to make a special note that in Ms. Koenig's testimony against LB 654, she made a statement that people who violate orders should be rigorously punished. And I'll be curious to see what she has to say against this bill after she made that statement.

SENATOR BOURNE: Thank you. Questions for Mr. Morehouse? Senator Foley. We're not going to have displays from the audience. Thank you. Senator Foley.

SENATOR FOLEY: You spent \$2,000 and...

GERALD MOREHOUSE: Over \$2,000.

SENATOR FOLEY: ...and the judge awarded you \$250 in the case.

GERALD MOREHOUSE: He made her pay \$250 of my attorneys' fees.

SENATOR FOLEY: Right. Did it at least result in some improvement in your access to the child?

GERALD MOREHOUSE: She hasn't done it again but I think

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that's also part of that is because she found out from the police officers as well as I did that she lives in Iowa which is a whole another issue, that Iowa already has this law. And the police there and now me and her all know that if she does it again and I have my decree all registered in Iowa, the police will take action over there. So I think that's the real reason she hasn't done it again.

SENATOR FOLEY: I see. Thank you.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you.

GERALD MOREHOUSE: Thanks.

SENATOR BOURNE: Next testifier in support.

NEAL RAUHAUSER: My name is Neal Rauhauser, R-a-u-h-a-u-s-e-r. I'm a resident of District 9 in Omaha, Nebraska. I have been separated for 34 months. During that time period, I have been denied visitation approximately 30 times for a total of 70 days. On the times when I do have my children it is frequently treated as a police emergency. I have a log that contains the names and serial numbers of 28 Omaha police officers. I have a number of repeat visitors. In an effort to resolve this, I have gone to court on a number of occasions. Thus far it has cost me \$1,800 and my own attorney fees, \$2,800 awarded to her, and there has been, as far as I can see, no consequences for her. The presence of LB 128, the possibility of an officer writing a ticket the first time and then jail time the second time would probably bring all of this to a screeching halt. So I would very much like to see this bill passed.

SENATOR BOURNE: Thank you. Are there questions for Mr. Rauhauser? Seeing none, thank you. Thanks for your testimony. Next testifier in support?

MARK HANNER: My name is Mark Hanner, H-a-n-n-e-r. I'm writing in support of LB 128. It is my belief that this bill will assist noncustodial parents, myself included, win the constant fight to remain an active and influential part in the lives of our children. For 21 years and at a heavy financial expense I have fought an ongoing battle to remain a key element in the raising, nurturing, and parenting of my

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children in spite of death threats, physical and verbal assaults by both the biological mother and several of her male friends. Visitation is court ordered but never enforced. When I am granted the privilege of unencumbered, uninterrupted, and nonconfrontational visitation by my children's mother, I am often without the extra cash necessary to enjoy the simplest of outings. My children and I go for walks, ride bikes, play chess, and cook together. I will help with homework, we talk, we share, we dream. To date, I have spent over \$31,000 in attorney fees simply to be a part of my children's lives. I am granted a mere 30 hours of visitation every two weeks, certainly not enough time to have a lasting impact on the raising of a child. When my ex interferes with the short amount of time I have with my kids it severely compromises the father-daughter relationship, it undermines my significance in the eyes and minds of my girls, and simply stated, alienates me from my kids. I urge you to pass LB 128. Do it for my children, do it for all children.

SENATOR BOURNE: Thank you. Are there questions for Mr. Hanner? Seeing none, thank you. Next testifier in support?

JIM ISAAC: (Exhibit 33) I have some written testimony that I'd like to make a part of my testimony also.

SENATOR BOURNE: Just set it on the edge of the desk and we'll have copies made and it will be entered as part of the record.

JIM ISAAC: Very good. Thank you for the opportunity to speak to you today about why I am in support of LB 128.

SENATOR BOURNE: If you'd state your name and spell it for the record, please.

JIM ISAAC: Sure.

SENATOR BOURNE: Thank you.

JIM ISAAC: Jim Isaac. It's I-s-a-a-c.

SENATOR BOURNE: Thank you.

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JIM ISAAC: (Exhibit 34) When my daughter was 21 months old, she and her mother moved to Nebraska. Her mother later filed for divorce and in 1991 this divorce became final. My daughter is 17 years old today. She is a lovely, gracious, young lady. She's on the honor roll at her school and she is active in speech and drama and on her school's dance team. She knows beyond any shadow of a doubt that she is loved by both parents. For me, the problem of interference with visitation is over for the most part. I am here today so that other young men and women will not have to endure what I have endured for years. There are several reasons why I believe that LB 128 is in the best interests of children in Nebraska. LB 128 will help create greater compliance with already court-ordered child support payments. LB 128 will reduce the financial hardship on the divorced parents thereby allowing them greater financial stability resulting in greater opportunity for the children. Finally, LB 128 and its strict enforcement will actually act as a catalyst to reduce violence against women and children, and I'll get to that later. There is no question that interference with visitation is a problem. In their book, Visitation, A National Study J. Annette Vanini and Edward Nichols state that 77 percent of noncustodial fathers are not able to visit their children as ordered by the court as a result of visitation interference perpetuated by the custodial parent. In the periodical, Family Relations, James Dudley wrote that for men the former spouse, the mother, was the greatest obstacle to having more frequent contact with the children. One survey that Dr. Veskrna referred to claims that 40 percent of mothers reported that they had interfered with the noncustodial father's visitation on at least one occasion. Yet children want to spend time with their parents. My wife and I are foster parents and I've met some great kids with that. One girl who is 17 hasn't seen her dad since she was eight years old. And she asked me if I would help her find her dad. Well, circumstances didn't allow for that but we were able to do that. We are able to...she calls me her substitute dad. Some people who have opposed this bill in the past say that they're merely looking out for the interests of the children. I would challenge that opinion. If money is the measure of a child's quality of life then LB 128 is a financial necessity. Armin Brott writes in Throwaway Dads that regardless of the income level of the father or mother, child support compliance improves the more the noncustodial

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parent is allowed to spend time with the child. The U.S. Census Bureau reports that 79 percent of men with visitation rights pay child support on time and in full. Another financial concern is the cost of enforcing compliance in the current legal environment. I did a little survey in my job and those of us who are noncustodial fathers figure we've spent on the average about \$20,000 just going back to court, back to court, back to court. Mine was actually a little bit more than that. Think about what would have happened if that money would have been spent to educate my daughter or even to provide better housing for either she or myself.

SENATOR BOURNE: Thank you. Are there questions for Mr. Isaac? Seeing none, thank you.

JIM ISAAC: Thank you.

SENATOR BOURNE: Next testifier in support? If there's other testifiers in support, please make your way forward to the on-deck area and sign in. Whenever you're ready.

KEN HUGO: (Exhibit 33) My name is Ken Hugo, H-u-g-o. I am in support of LB 128. I guess in the previous bill, LB 322, there is some directions in there for corrections of behavioral situations there. But here and this bill has some things for redress of situations that should have been taken care of many years ago. And I guess I'd like to hear those that may be in opposition to this bill that may be for the interests of children, help me understand why so many of our young men that are filling our prisons in this state come from homes where these young men didn't see their fathers and from what I understand Tecumseh is getting close to being filled now. This is a bill that doesn't require any taxes and when you come to building another prison that's going to require tax dollars. I guess this bill merely is designed to take care of situations, as I said, should have been remedied a long time ago. Yeah, I guess I don't have to be here because, again, I'm the aberration of the law. I get to see my child. I have the influence on my child but I know that this is important for other people's children. That's why I take the time and I guess there's punitive actions in here but other bills carry punitive actions and the person that is doing the actions whether it be speeding or whatever it is, they have it within their

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power to avoid the punitive actions and this is another case they have within their power to avoid it. And the bill also has enough in lines 13 to 21, enough protections in there if there are reasons for withholding the visitation. And I guess the other thing that's kind of interesting here, I noticed in the Omaha World-Herald that there was a...your debating somewhere introduced here in LB 53 to restore voting by felons. And I can't say that I'm for or against that but these are people that may have killed somebody or seriously injured someone and are restoring that. Here are fathers and some mothers who have done nothing to not see their children, have to pay money out of their pocket to try and see them to no avail. And this needs action and as someone previously mentioned, the mentoring. We're so quick to bring the mentoring, the same paper, same day. Mentoring and big brothers and big sisters into the homes of strangers, into the homes, live-in boyfriends, live-in girlfriends. We see that as a plus? And not the father that has nothing, been proved guilty of nothing. No court action. That is all I have to say on that. Thank you.

SENATOR BOURNE: Thank you. Are there questions from the committee? Seeing none, thank you, Mr. Hugo. Appreciate your testimony.

KEN HUGO: Thank you.

SENATOR BOURNE: Next testifier in support?

GAIL TAYLOR: My name is Gail Taylor and my husband, Mark, was divorced probably nine years ago. So I have been a stepmother. He has three daughters. The oldest, Katie, who is now 18, she spoke here earlier today in support of LB, I think, 654? She moved in with us three years ago and her reason for moving in with us three years ago is her mother refused to let the girls come visit their dad. I suppose in the nine years that they've been divorced we have probably spent over \$20,000 going back to court. Each time we go back to court...well, the first time we went back to court was in Douglas County. We won that. He was asking for the four weeks summer visitation. And his parenting plan which is a very good parenting plan, it lays out the holidays, every other weekend, pick up at 5, drop off at 5 on Sunday. Every other holiday is split. Every time we went to go pick up the girls or made arrangements to pick them up, they

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weren't there. He had specific times he could call. They were Tuesdays, Thursdays, and Saturdays before 9 o'clock. He would call, no one would answer the phone. If he called on the off days so he could talk to his girls, she would say, it's not your day to call. You're harassing us. I will file a harassment suit if you keep calling us on your off days. Katie decided to move in with us because she told her mother that she loved both parents and that broke her mother's heart. Through all this, her mother has alienated all three girls against their father. Katie stood up and moved in with us. The last time we took her to court and it was for refusal for visitation, the judge found her contemptible but not in contempt. Right now they're 18, 16, and 13 and, basically, we are letting the 16- and 13-year-old decide when they want to visit because they know that Katie has made her decision and it's up to them now to make theirs. That's it.

SENATOR BOURNE: Thank you. Are there questions for Ms. Taylor? Seeing none...oh, Senator Friend.

SENATOR FRIEND: Thank you, Senator Bourne. Ms. Taylor, do you think...I mean you've waited a long time and you've obviously looked at this language and you've been here all afternoon. I mean, we've been talking about these bills. Do you think...a bill like this gets passed hypothetically or functionally, you know, it ends up happening. Could something like that in your opinion affect the behavior of the type of person that you're talking about, do you think? I mean...

GAIL TAYLOR: I think it would because every time we've gone back to court, yes, it costs her money and it costs us money. But she gets a satisfaction out of torturing him. If we go to pick the girls up, with this bill and she is charged a fine, we don't have to go to court. It's only costing her money, us time to go pick them up. I would think that it would stop that. I mean, we have a court ordered visitation, dates, times set, and we haven't seen the other two girls since December 6 or 3.

SENATOR FRIEND: Thanks.

SENATOR BOURNE: Thank you. Are there further questions? Thank you. Appreciate your testimony. It helps the

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committee so thanks for coming down. Next testifier in support.

ROBERT WATSON: Good afternoon, Mr. Chairman, members of the committee. My name is Robert Watson. I'm a registered lobbyist for Fathers' Rights in Nebraska. It's W-a-t-s-o-n. And after reading transcripts from this bill last year, frankly, I didn't prepare a speech. I was more willing or ready to take questions from you guys but I came up with one while I was listening. And I've been around since the inception of this bill and just to be clear, it was never the intent of this bill to put anyone in jail. The intent is to act as a deterrent to the type of behavior that's going on which is the interference of visitation. We got a few questions last year about arrest. Actually, it came up 184 times, I think I counted last year. And just to clarify, the state of Nebraska has a policy, I believe, of citation in lieu of arrest or preferred remedy in the cases of misdemeanors. You've already heard that there's a problem with this and I'm not an attorney but I take about 20 calls a day to about, I did about 600 legal referrals last year from callers, members of our group. And right now we're taking a lot of referrals, particularly from the north Omaha Fathers for a Lifetime and from Nebraska Legal Services we're getting referrals now. We're getting pro bono, you know, free attorneys and reduced cost attorneys. Well, you've heard from guys here who spent \$20,000 or so, you know, and that's a concern to me but what's really a concern to me is a guy, frankly, who doesn't have \$50 much less \$2,500 or \$20,000. My fear is that if he's out of money then his kids are gone and there's nothing he can do about it. Now my organization, if there's any history of domestic abuse or, to be honest with you, I'm a little bit of a control freak, I think if I even get a feeling that there's a history of abuse we don't take them and we don't give them any services. But this is a real problem. Last year I believe the government or the federal HHS designated, I believe it was \$1.3 million in grant money to an organization similar to mine to try to find a solution to interference of visitation. And if you look at the Duluth wheel...I call it the Duluth wheel that the Domestic Violence people hand out, I am actually also associated with the National Domestic Violence Hotline and I am very sympathetic to those concerns. This can be a form of emotional abuse. I just can't stress strongly enough

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that there are very few remedies that are cost effective right now for people suffering this sort of abuse. As it stands, a parent who doesn't pay child support, I'm aware of 13 remedies through HHS, one of them being a Class IV felony that the senator pointed out. Garnishments, license, professional license and driving license suspensions, credit bureau reports, tax refund intercepts, and that's a wonderful thing. But you have one remedy in this case and it's available to very few, those who can afford it. And that's all. I really hope you guys pass this through General File.

SENATOR BOURNE: Thank you. Are there questions for Mr. Watson? Seeing none, thank you. What a difference a year makes, huh?

ROBERT WATSON: Yeah, (laugh) no kidding.

SENATOR BOURNE: Next testifier in support? No other testifiers in support. First testifier in opposition?

SUSAN ANN KOENIG: Good afternoon, members of the committee, my name is Susan Ann Koenig, K-o-e-n-i-g. I speak in opposition to LB 128. I think it's useful for us to start and look at what the remedies are which are currently available when there has been an interference with child visitation. Number one, the contempt of court which means that the judge can either fine the person, jail the person, or put them subject to an order to purge themselves of contempt. Number two, there's a separate statute that allows for enforcement of the visitation by granting of some additional visitation time. And number three, the right to actually modify the order where someone has persistently...where there's been a material change of circumstances and it's in the best interests of the children such as where you've had the kind of parents you've been hearing about here today who are persistently interfering with custodial rights. What you're also hearing today is how costly this is, and these parents are absolutely right. The answer is, what is the solution? I think the solution is perhaps a look at some legislative reform, surrounding the award of attorneys' fees. That is one of the greatest areas of injustice that occurs in family law in our state, and that is when there are contested matters and the court can clearly see that one party has caused unnecessarily the

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litigation. You get these things like these \$250 or \$500 attorney fee awards. They are clearly inadequate. The same is true when matters are forced to be litigated but ought not to be. The judge says, why are we here? Why is this happening? But then the judges don't give consequences or you have a contested custody matter that's clearly frivolous because the judge says that each pay their own attorneys' fees. So not just in this area but in a lot of areas, I think the hammer will be that people are paying out of their pocketbooks and that it go to the person who needs the money to be able to enforce their rights. I think the other important issue to remember is, where are these decisions best made about are we going to put a parent in jail if we think that there's been a violation of some kind? Remembering that these are gray areas. I had a father in to see me in the last two weeks whose two-year-old, the mother...they have a two-year-old. The mother had been admitted three times with methamphetamine use in the last week. I counseled him, don't let this child go. It was in violation of a court order. I said, we'll risk you being in jail for contempt of court because I think CPS should turn you in if you release this child to his mother who's just admitted this to you. So I'm telling you, there are a lot of gray areas. You'll hear from others about domestic violence but there are other areas where it's a fine line. Do you want that to be decided by police officers, criminal prosecutors in criminal courts or do you want it to be the court that has jurisdiction over custody and visitation? I say, our courts in family law are the better place to do that and they need to be doing their job and if they're not then that's a separate issue than whether or not we change the law and risk a custodial parent being arrested because they're protecting a child. And I would also tell you, I think our judges take this matter very seriously. I do very little of this work on either side for either parents being accused of violating or of violating. And that's because they know judges don't mess around with this.

SENATOR BOURNE: Thank you. Questions for Ms. Koenig?
Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Ms. Koenig, we've been through this quite a few years. You're saying money would, by hitting the pocketbook instead of enforcing the child visitation you think would do that.

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SUSAN ANN KOENIG: Well, I think it's important that there be serious consequences when court orders are violated of any kind and I'll stand by that. I said that earlier today and I meant it. And the question...and one of the challenges when you go in...let me tell you in the criminal prosecution world, it's not perfect either. Talk to these victims of protection orders. Well, they got diversion this time. Then they got, then they got the charge reduced. Then they got the charge dismissed. Then they had three charges and they dismissed two and they pled to one. You know, well, it's been so long since that last charge we're not going to do anything. Make them pay and I think a great way to pay...of course, I know you're going to think this is a little self serving because I'm an attorney in private practice, right? (laugh) Make them pay attorney's fees because that's...number one, it's going to hurt and number two, it's going to go to the person who needs the money to enforce their rights.

SENATOR Dw. PEDERSEN: As you and I both know, though, there's a lot of these people don't have that kind of money. They don't have the money to get involved and what bothers me even more that if a...is the, what I'm hearing, the blatant disrespect for the visitation by the courts itself. I mean, they...

SUSAN ANN KOENIG: And, you know, I have to say that that has not been my experience so you have to listen to the other folks who testified. Talk to other family law lawyers. I see a zero tolerance from judges, I mean, on visitation orders. It's like, you know, unless you want to risk losing custody you don't mess with a visitation order. And I'll speak for Douglas County and my experience in Sarpy County which is not as great, that the judges just...they won't put up with it. So, and again, I'm telling you what my experience has been.

SENATOR Dw. PEDERSEN: And see, my experience has been on the other side. You know I worked in the Douglas county jail with teenagers. We got 162 kids locked up and we have half of them get visitors from either side, mother or a father.

SUSAN ANN KOENIG: Right.

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SENATOR Dw. PEDERSEN: You know, it's unbelievable in that case but it...I do believe that something needs to be done here and I don't know after 13 years why we can't...that I've been here that something can't come together and take sure that their kids are being taken care of.

SUSAN ANN KOENIG: The other part of this bill is the risk of abuses, that you have a criminal charge being brought that becomes the diversion from the real issues that are at hand. Like I'm worried that I'm going to be criminally charged for protecting my two-year-old from you even though you've just told me you've been using methamphetamines routinely and so I don't take any action to protect my child.

SENATOR Dw. PEDERSEN: But that's such a small percentage of them, isn't it or is that such a big...

SUSAN ANN KOENIG: Well, I...speaking only again from my own experience, the number of cases of denial of visitation that is persisting is real limited in my practice so...

SENATOR Dw. PEDERSEN: I know that happens. I'm not saying it doesn't happen. I just wonder if it's a percentage wise. Thank you for being here.

SUSAN ANN KOENIG: Thank you.

SENATOR BOURNE: Thank you. Further questions for Ms. Koenig? Senator Aguilar.

SENATOR AGUILAR: You suggested that the best solution is to go back to court. Well, it sounds to me from the proponent's perspective they're doing that and they're not getting resolution.

SUSAN ANN KOENIG: Um-hum, yeah. And I can't speak for judges who aren't doing their job. I mean, I think that's the bottom line. You know, I just think these decisions are better made by the judge who can hear all of the factors so they can do more than just levy a fine or put somebody in jail. But they can change the existing order and provide some relief from there forward because if a parent has been denied then they're going to need more time maybe.

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SENATOR AGUILAR: So possibly would LB 128 provide the clarity that they need to make the right decision?

SUSAN ANN KOENIG: But the criminal court will not under...a judge who convicts someone under LB 128 will not have authority to modify the existing custody and visitation order and therein lies the inadequacy of the relief.

SENATOR AGUILAR: Thank you.

SUSAN ANN KOENIG: Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you.

SUSAN ANN KOENIG: Thank you all.

SENATOR BOURNE: Next testifier in opposition?

TRACEY LATTURE: Once again my name is Tracey Latture, L-a-t-t-u-r-e. And I was found in contempt of court before there was even a trial. Again, my son's father retaliated by seeking visitation after Health and Human Services contacted him for child support and I begged them not to do it. I begged them. I said I would refund birthing expenses, whatever it takes, please do not. Well, they didn't listen to me and they went ahead and I was summonsed on the 12th of February and there was a hearing on the 21st of February that I was not allowed to be present to. And a young attorney agreed into a stipulation, a temporary visitation stipulation without my permission. This man was in my living room on the 23rd of February and, again, you know, even the first visit threatened custody of my son. By the time I got to court, now again, I'm already in contempt of court and she totally put the burden on me to make this work. You know, she has affirmative responsibility to see that parenting time occurs. While she may not have to be enthusiastic about it, she cannot be passive, whether the transfers for Mr. Blackstock's parenting time goes smoothly for Nathan is more of a function of her behavior than anyone else's. If she doesn't know how to behave to make this possible, she should learn. She puts me in contempt. She sentenced me to 14 days jail and suspends the execution of sentence as long as I comply, and I shall not be purged of this contempt unless I propose a purge plan satisfactory to

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the court at that time. And this was before she even heard the case. I mean, this man has been nowhere in this child's life. Okay, then on two occasions he left my house without my son, knowing I was in contempt because I would not buckle him into the car seat screaming. I was a child-care provider for eight years prior to this and do take the needs of children very seriously even when it comes to their father. But like I say, he did that on two occasions. He has since, after that, hit himself and found me...and charged me with assault. You know, I mean until the courts know how to protect these children from domestic situations I really think it's crazy for them to put a person that's responsible for this child's safety, to take that right away from them to help them make a decision whether we should send it. I think it should be done on a case by case and shame on the ladies who don't let their sons go see their father or vice versa. I mean that's...we do need to find a solution to that but to make it a criminal offense just off the bat, it's got to be heard on an instance by instance so we can keep these kids safe. It's just too risky.

SENATOR BOURNE: Thank you. Are there questions for Ms. Latture? Seeing none, thank you. Next testifier in opposition?

TARA MUIR: (Exhibit 35) Good afternoon, Senator Bourne and members of the committee. I have my written testimony which I'm not even going to read. I'm just going to throw out a stat for you and I also have a letter from another person in opposition, JoDee Pendergast and she's submitting her letter. Bottom line is that we just fear a law like this is going to escalate already warring partners and in the cases of domestic violence it's going to be the victims who continue to pay with yet another law that's going to be used against them. I did want to say in the past year programs outside the Omaha area, we've served over 7,200 people. Most were adult women, almost 25 percent were children and 536 or 7.4 percent of the people we serve are men. I'm happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Ms. Muir? Senator Foley.

SENATOR FOLEY: In those instances where a parent is denying the other parent access to the child in violation of the

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court order, what remedy do you see other than what's in existing law?

TARA MUIR: Jim Gordon has talked a lot about mediation and I would just echo everything that Susan Koenig and Jim Gordon have talked about in using the courts. And if possible, using mediation centers. If they mediated their parenting plan once maybe they can go back and try and work out these issues. There are problem solving courts that are trying to be created by the Supreme Court seeking grants, I believe getting some funding for that and...

SENATOR FOLEY: One party can't compel another party to go to a mediation center, can they?

TARA MUIR: No, they can't.

SENATOR FOLEY: So that's inadequate.

TARA MUIR: Right. And I guess the bottom line is I don't think there is a solution but making people have even a longer criminal history is problematic and will escalate. Many relationships that may not...were violent when they began so we just fear the escalation and the misuse of even more criminal laws to use against people.

SENATOR FOLEY: So if a parent is not having access to his child it's just kind of too bad.

TARA MUIR: Well, I think Ms. Koenig really spelled out a lot of the remedies. And the costs are abominable. I serve on access to equal justice with Legal Aid of Nebraska, and we've been meeting for two years trying to figure out how to get more affordable legal services, not just someone who can answer a quick question but really represent you in court. And it's a group made up of probably over 20, 25 organizations that are really trying to figure this out to provide free legal services. And if we can keep going in that direction, folks with problems like these, maybe there is a type of problem solving court that can be held where a judge will sit and people can come in and get that case heard for no charge.

SENATOR FOLEY: Thank you.

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SENATOR BOURNE: Further questions? Senator Flood.

SENATOR FLOOD: Thank you again for your testimony. And this is my first time on a committee but it seems to me like I could close my eyes and predict who's going to testify on each side of every bill. And, you know, I see the very best that you're working for and I can see the very best that the proponents are working for in every bill. Has there ever been an effort to sit down with all the people that have been here in this room today to testify and to hire an experienced mediator and work jointly on some legislation that would affect children and families?

TARA MUIR: There hasn't been...I've had conversations with a couple of people in the room and we just seem to get to a point where we agree to disagree and I don't know how I can be more clear. I'm not here to represent anyone but victims of domestic abuse so I really...I can entertain questions about the general population. I'm not here to represent women. I'm here to represent those who have been victimized and we have talked with a couple of people in the room. We actually talked with LaRon Henderson who runs a fatherhood initiative program within the Nebraska Children and Families Foundation. Had great conversations with him and the foundation as far as I know has said they will be coming in and supporting this bill with a letter. So those conversations were productive. He was in agreement that there is a bright line to be drawn in abuse cases and those are the ones I talk about. I don't want to misrepresent them and somehow furthering a gender war because that's not what I come here to testify about. It's about victims.

SENATOR FLOOD: And I can appreciate that, I really do. One of the...if I take out the Duluth model, isolation is on there and if you're here to represent victims, if a custodial parent...take gender out of it, refuses to let the noncustodial parent have access to child, a minor child, that violates this prong of the Duluth model and that's isolation. Doesn't that compromise your testimony because if you're fighting for victims you're not addressing the isolation of one parent to the other?

TARA MUIR: I don't believe I'm being inconsistent at all about when you look at one piece of the wheel. When we train people about domestic violence, one of the first

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things we say when we have more than three minutes is to look at the wheel and don't get upset yet that you see your own behaviors in that wheel because we all have pieces of us that are control freaks or need a little more power in some situations than others. And all of the things that that power control wheel talk about are normal human behaviors. But abusers typically use them all in a very concerted effort to keep a victim from telling his or her story and not going to the police and not getting anything except what that batterer sees in their own world.

SENATOR FLOOD: And I can appreciate that. Just I could almost pick the issue and use a pen and checkmark where you're going to come in and testify on from my vantage point. And I just think there's value to maybe sitting down with the other side and seeing if there's...I think there's more common ground that I've heard in the testimony today than has been alluded to in yours. I think you work for the very best. I don't have a doubt that you want the very best for children and families but I also see that on the other side. And for what it's worth I'd encourage you to sit down with the other side and have a joint conference for a day. I think they're both good if that makes sense to you.

TARA MUIR: It makes sense although, again, we work for private nonprofit organizations and our time is so limited, I've had hours of conversations with a couple of people in the room. And we really can't agree on some things because it may come down to gender really and we can talk about the different statistics on who's more abused than the other all day long. But all we come as an organization to testify on are the victims who call us and we don't say one gender only. So I'm kind of flattered that I'm being seen as such an obstacle sometimes I guess (laugh). But I appreciate your thoughts and willingness to try and pull us together but it's been tried. (See also Exhibit 36)

SENATOR BOURNE: Thank you. Are there further questions? Seeing none, thank you. Are there further opponents to the bill? Are there any in the audience wishing to testify in a neutral capacity? Come forward. We have one neutral testifier. Sorry, Senator Hudkins. Sign in after if you would. Are there any other neutral testifiers? Okay, this will be our last testifier on this bill. We're ready...

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CALVIN SUTHERLAND: (Exhibit 37) Calvin Sutherland, S-u-t-h-e-r-l-a-n-d. I am in support of LB 128. I can't really speak to when I had court ordered visitation I was never denied. When the case was dismissed that's when I was denied.

SENATOR CHAMBERS: I have a question.

CALVIN SUTHERLAND: Yes.

SENATOR CHAMBERS: You said you favor this bill?

CALVIN SUTHERLAND: Yes.

SENATOR CHAMBERS: Then you missed your opportunity. This is for the neutrals and if you were not here, then under the pretense of being neutral, when you declare that you're in favor of the bill I think it's inappropriate to let the testimony come in as neutral. Are we on the...

SENATOR BOURNE: We're on neutral, we're on neutral testimony. How about if I enter your name in as a proponent? Would that be okay?

CALVIN SUTHERLAND: In my statement? Okay.

SENATOR BOURNE: And your testimony would be entered in as a proponent.

CALVIN SUTHERLAND: Okay.

SENATOR BOURNE: Okay. Thank you, appreciate it. And if I didn't make the rules clear at the beginning I apologize. Senator Hudkins to close.

SENATOR HUDKINS: Thank you, Senator Bourne. This has been a long afternoon so I'll do this as quickly as I can. With regard to Tara Muir who testified, Mr. Robert Watson with Fathers' Rights gave her a copy of the bill, asked her for any input to the bill so that there could be a workable solution between the two parties. She never returned his phone calls. And why should noncustodial parents who have been wronged have to go to court? There is a court order for child visitation and if the judges won't rule the custodial parent in contempt then why would they award

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attorneys' fees? The noncustodial parent doesn't want money. He or she wants to see their children. We also heard about well, if the noncustodial parent shows up high on alcohol, methamphetamine or whatever, we covered that in my opening testimony. There is an affirmative defense. If the noncustodial parent shows up in that state, the custodial parent does not have to give the child for visitation. I have several pages of a clinical psychology review entitled Child Visitation Interference and Divorce. This is from the Florida Institute of Psychology and the Institute of Florida College of Medicine. I'll just grab at some excerpts. The Children's Rights Council estimates that six million children in the United States have their visitation interfered with by the custodial parents. Two surveys support the range of this problem. One survey shows that approximately 50 percent of divorced fathers relate that their ex-wife has interfered with visitation with their offspring. And similarly, approximately 40 percent of custodial mothers admit denying their ex-husbands visitation. This can also go the other way. So it is a problem. The legal system has a variety of attributes that unfortunately help to perpetuate child visitation interference. For most judges, they are very patient and they'll bend over backwards to allow each side to adequately present their case. Unfortunately, the benefit of giving everyone his or her day in court slows the process considerably. Again, we are saying that noncustodial parents when there is a valid court order to visitation and the noncustodial parent does not abide by that, why should you have to go to court to see your own children? Thank you.

SENATOR BOURNE: Thank you, Senator Hudkins. Senator Chambers.

SENATOR CHAMBERS: Did you say Erdman?

SENATOR BOURNE: No, I don't think so.

SENATOR CHAMBERS: Okay (laugh). Senator Hudkins, a defense is not something that can be said to an officer to prevent an arrest. A defense is offered after you have been charged and brought to court and are being prosecuted. So an officer is not to make an arrest in the case of a misdemeanor unless he or she witnesses the misdemeanor being

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committed.

SENATOR HUDKINS: And you are right. These...

SENATOR CHAMBERS: But a person can go to a prosecutor and swear out a warrant if the prosecutor believes that enough evidence is given to justify a warrant being issued. So if an officer chose not to do something because he or she was not sure of the facts and did not make an arrest the person who feels aggrieved could still go to the prosecutor and swear out a warrant.

SENATOR HUDKINS: Yes, and there, in most cases, would not be an arrest. In cases like this it would most likely be just a cite.

SENATOR CHAMBERS: But it doesn't have to be. It can be an arrest. But let's say that we have a person and we'll let it be the least amount of intrusion by law enforcement that's possible. The custodial parent gets a ticket and goes to court and the judge throws out the ticket, listens to the prosecution present its case and on the basis of that the defense lawyer moves for dismissal because there had not been the making of a case and the judge throws out the ticket. The noncustodial parent calls the police again and a ticket is issued because the officers...they don't like to get in the middle of domestic disputes just like nobody does. And if a ticket can be issued, they would rather do that. And the judge again throws it out. At what point would malicious prosecution be something we ought to put into the statute and make the whole thing criminal and continue to pour gasoline on the fire? If a noncustodial parent makes two complaints and neither one is sustained by the court, can we make that a criminal offense by misuse of the criminal system? Would you be in favor of that?

SENATOR HUDKINS: Oh, I would hope that the noncustodial parent could be able to document, go to the next door neighbor if you have to and say...

SENATOR CHAMBERS: Not hope...I want to give the hypothetical so if we're going to convert what is essentially a civil matter into a criminal matter and put it into the criminal court we should have an equal amount of aggravation and exacerbation by the statute. And I think

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the way these laws are being presented by these groups shows exactly...and I've been on the committee. This is not my first time. Senator Flood's experience is different from mine. These groups cannot get together and work this out. That's impossible...

SENATOR HUDKINS: Because you have a constantly influx number of people.

SENATOR CHAMBERS: The fact, though, that an attempt is made to convert a civil matter into a criminal matter makes it clear why it's not going to be worked out by anybody. But if the body of the Legislature is of a mind to pass a criminal statute like this, then we're going to criminalize the misuse of the system by the noncustodial parent so that both are facing the possibility of criminal prosecution and each can have an arrest on the record. And we can exacerbate a bad situation. Here's what I'm getting to. The first thing, one of the first things that is taught in law school and judges will even say it when they have different kinds of cases. Hard cases make bad law. When each domestic situation is sui generis or a specific thing on its own, it's impossible to pass a criminal law that is going to be just in its application. So I would never support legislation of this kind and I don't believe that the Legislature can pass a law to stop warring spouses or if they were never married from ceasing their wars. We just give another bit of ammunition, another weapon to be used, and are now trying to involve the criminal justice system which will be as ineffective as everything else has been.

SENATOR HUDKINS: Isn't violation...I know, we can't ask you questions, a rhetorical question. Isn't violation of the court order against the law?

SENATOR CHAMBERS: It's contempt. The courts are empowered to enforce their orders by contempt.

SENATOR HUDKINS: And if the judge will not find someone in contempt after they...you've heard the...

SENATOR CHAMBERS: Then the judge has to be convinced that contempt is what exists. And sometimes judges will look at the way the two parties are warring and will say, there is no contempt here. And the people can go in and say, I think

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the judge is unjust. There...

SENATOR HUDKINS: And the children suffer in the meantime.

SENATOR CHAMBERS: Well, each side is going to say that the children are suffering.

SENATOR HUDKINS: I thought it rather interesting the testimony of Mr. Morehouse. He took his wife to court. She was found in contempt and she had to pay \$250 of his attorneys' fees and she has not since then denied him visitation because Iowa has this law. She lives in Iowa. She knows that she is therefore liable in Iowa. So perhaps his taking her to court was the best thing that ever happened. Yes, the people aren't getting along. Yes, they probably hate each other but they have those children...

SENATOR CHAMBERS: Well, if I understood you, you said a contempt citation was what made her straighten up and fly right. This is a criminal law.

SENATOR HUDKINS: If Iowa has the criminal law on its books as well but anyway the custodial parent has since then not denied visitation...

SENATOR CHAMBERS: That's one example.

SENATOR HUDKINS: That's one example. All of these are one example but it's the children that we're trying to protect, not working against...that's not the word I want. It should not be the custodial parent battling with the noncustodial parent just because they hate each other. The children have been awarded by the court to visitation by their noncustodial parents and if you're denying that because the judge whoever that might be is saying oh, there wasn't contempt here. Was he there? I don't think so.

SENATOR CHAMBERS: We cannot...

SENATOR HUDKINS: The judge knows when the visitation schedule is, he can look.

SENATOR CHAMBERS: We cannot control judges by means of criminal statutes and when judges are not doing what people want them to do those people are not going to be able to

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come to me and say, the judges won't do what I think they ought to do so you criminalize this conduct. Now there might be enough members on this committee to send it on the floor. There may be enough members on the floor to pass it and the governor may sign it. But it's not going to have easy sledding. And I just want to make it clear that I do not agree with this approach of criminalizing conduct because judges won't do what people think they ought to do and that's why this approach is being taken.

SENATOR HUDKINS: Another rhetorical question. You may answer it if you wish. What...

SENATOR CHAMBERS: I didn't understand you.

SENATOR HUDKINS: Another rhetorical question. You may answer it if you wish. You have...

SENATOR CHAMBERS: You know I'm putty in your hands.

SENATOR HUDKINS: I'm sorry?

SENATOR CHAMBERS: You know I'm putty in your hands.

SENATOR HUDKINS: Oh, thank you, I appreciate that (laughter). Now, if what you heard this afternoon, there is a problem, you would agree with that. What...

SENATOR CHAMBERS: I've heard this several years running.

SENATOR HUDKINS: Oh, yes, all right, several years running. And there's still a problem. It hasn't been fixed.

SENATOR CHAMBERS: And there will always be.

SENATOR HUDKINS: How would you suggest that it be fixed?

SENATOR CHAMBERS: Don't let people marry and if they get married, sterilize both of them (laughter).

SENATOR HUDKINS: I think (laugh) that might end civilization as we know it.

SENATOR BOURNE: Senator Flood has a question.

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SENATOR FLOOD: Senator Hudkins, in light of the indication of the Rule 33, would you be willing to work with this committee if we...I believe your result, if I hear you right, is to help visitation go more smoothly.

SENATOR HUDKINS: Absolutely.

SENATOR FLOOD: If we were to work on the civil side and make it easier for noncustodial parents to get into civil court with an affidavit versus having to call the police.

SENATOR HUDKINS: I will do whatever work I can with the committee but in answer to your question, why should they have to go to court in the first place to gain what is rightfully theirs?

SENATOR FLOOD: Well, for the purposes of violating a civil order, you have to go to court to remedy it. But, for instance, think about our protection order statutes. You fill out an affidavit, you file it with the court and notice is given to the other parties. Instead of waiting, what we have now, sometimes four months, you wait two weeks. The other party is summoned to court with service and you have a pro se hearing.

SENATOR HUDKINS: I don't know what that is.

SENATOR FLOOD: Well, you don't have an attorney present. You tell the judge what happened and the judge makes a ruling or asks to continue the hearing. If that accomplished your goal and it was sped up?

SENATOR HUDKINS: If that would accomplish the goal of allowing noncustodial parents to see their children which I don't know that it would but if it would, I would be more than happy to listen.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Further questions? Seeing none,...

SENATOR HUDKINS: Thank you.

SENATOR BOURNE: ...thank you. That will conclude the hearing on LB 128. Senator Jensen to open on LB 396 and,

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LB 396

again, it's going to be the same order as the last three bills. If you are a proponent, make your way forward, use the on-deck area and sign in, please. Senator Jensen, welcome.

LB 396

SENATOR JENSEN: Thank you. Since I am...these two bills are between all of us going home I'll be very quick. Good afternoon, Mr. Chairman, members of the Judiciary Committee. My name is Jim Jensen, J-e-n-s-e-n, representing District 20. I'm here today to introduce LB 396. LB 396 clarifies Title IV-D division reporting duties as they apply to delinquent child support accounts. Currently, state statute requires the division to report all delinquent cases to the judge presiding over domestic relation cases and to the county attorney to authorize attorney. LB 396 requires that the division provide this case information in an electronic format and upon request in print format. This proposed electronic format reporting requirement will also apply to case information regarding interest due on delinquent child support accounts. It's our understanding that counties have expressed the preference for electronic reports. Those involved that choose to receive these reports in print format will be able to maintain that process. The bill simply provides a clarification to the preferred reporting method as it pertains to delinquent child support cases. And you have a letter, I believe it's been circulated, from the Nebraska Health and Human Services System expressing their support for the bill. I would just ask for your support also in advancing LB 396. Thank you. (See also Exhibits 38)

SENATOR BOURNE: Thank you. Are there questions for Senator Jensen? Thank you. Seeing no questions, first testifier in support.

BETH BAZYN-FERRELL: Good afternoon, Chairman Bourne, members of the committee, for the record my name is Beth Bazyn, B-a-z-y-n-Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. We appreciate Senator Jensen introducing this bill on behalf of NACO and the Clerks of the District Court. The Clerks of the District Court president Marlene Vetick

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had intended to be here today but wasn't able to be and so that is her testimony that's being distributed to you. LB 396 is intended to eliminate unnecessary paperwork for HHS judges and clerks of the district court. Under existing law, the Title IV-D Division has to certify delinquent child support information to authorize attorneys or county attorneys and judges. The reports are mailed out monthly and the clerks of the district court retain those for five years. The same information is already available in the chart's electronic system. Authorized attorneys, county attorneys, if they have access to the electronic system which, you know, assuming they have Internet and so on they would. They have this information that they can use for enforcement purposes. Judges typically rely on information that's certified to them through the system, certified payment records that are introduced as evidence as opposed to relying on the records that come to them from HHS. LB 396 would not eliminate any kind of certification by the Title IV-D Division. It would just eliminate the paperwork that goes out to the county attorneys, authorized attorneys, and judges. It's not an attempt to, you know, eliminate any kind of access to information. It's just sort of a nod to the electronic age that we're living in and information would still be available on paper if anyone requested that information. I'd be happy to take any questions.

SENATOR BOURNE: Thank you. Are there questions for Ms. Bazyn-Ferrell? Seeing none, thank you. Next testifier in support? Testifiers in opposition? Testifiers neutral? Closing is waived. That will conclude the hearing on LB 396. Senator Jensen to open on LB 444. (See also Exhibit 39)

LB 444

SENATOR JENSEN: (Exhibit 40) Thank you. Good afternoon, again. For the record, my name is Jim Jensen, J-e-n-s-e-n, representing District 20 and I'm here today to introduce LB 444 on behalf of the State Treasurer. I would first like to offer an amendment to LB 444. Upon discussion with the State Treasurer's Office and representatives from the Nebraska Health and Human Services System it has been determined that Section 1 of LB 444 be removed. That amendment I'm offering simply removes Section 1. The

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remainder of LB 444 remains the same. LB 444 seeks to make changes to the state disbursement unit authorities dealing with child support payment issues outlined within Section 43-4442.03 (sic). These changes deal with both mandatory cash payment requirement notices issued by the State Disbursement Unit and the cash payment method requirements as they pertain to child support payments. Under the current statutes scheme, the units shall issue notice to the payor requiring cash support payments for one year in the event that the payor has originated two payments made with insufficient funds within the previous one-year period. If the payor has originated three payments made with insufficient funds the unit shall issue a notice to the originator requiring that all future payments shall be made in cash subject to exceptions currently that are in the statute. LB 444 strengthens and simplifies this authority by putting the cash payment requirement provision in place in the event that the payor makes one support payment resulting in a return check charge or charges for electronic payments not accepted. In the event that the payor makes one payment with insufficient funds the unit may issue a notice stating that all future payments shall be paid by cash, money order, cashier's check, or certified check. The cash payment obligation can be waived based on provisions currently in the statute. The other change LB 444 makes is to the method of payment in the event that the unit issues notice requiring cash payment under LB 444 guaranteed funds or wire fund transfers have been removed as accepted methods of payment and money order, cashier's check or certified check have been added as acceptable payments. As you may know or may not know that we have about a million dollars in bad checks currently through the SDU and those payments usually...quite often anyway, will put the individual on the welfare rolls and because of the lack of funds going to support the child. This bill simply lightens the load bad child support debt puts on General Funds. State Treasurer Ron Ross is behind me and will follow me to explain these changes in more detail and answer whatever questions you have. With that, I'll conclude my testimony and waive the right to close also.

SENATOR BOURNE: Thank you. Are there questions to Senator Jensen? Seeing none, thank you. First testifier in support.

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RON ROSS: (Exhibit 41) Good afternoon, Chairman Bourne and members of the Judiciary Committee. For the record, my name is Ron Ross, R-o-s-s. I'm the State Treasurer and I'm here to testify in support of LB 444. Five years ago the State Treasurer's Office began operating the Child Support Payment Center. We process approximately 90,000 payments per month and distribute about \$20 million per month to Nebraska families. I am here today to ask you to consider modifying the number of bad checks we need to handle and chase down. The original legislation allowed the person or the employer making payment, for the person to write two bad checks every six months. In 2002, the Legislature changed this to allowing two bad checks every year. After becoming the State Treasurer last year, I began to identify the major problems with this process and then put an action plan in place to address the issues. We currently have a little over a million dollars in bad debt we're working to collect. We believe this proposed legislative change to allow one bad payment every two years will reduce our future bad debt and will decrease the amount of General Funds needed to run this very important state function. I would also support Senator Jensen's amendment regarding striking Section 1 of the bill. It's our understanding that HHS has made this a priority and will handle making this improvement administratively. Thank you and I'd be glad to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Ross? Senator Chambers (See also Exhibit 42).

SENATOR CHAMBERS: For clarification, Mr. Ross, what is the current status, there may be two bad checks within a period of one year currently before that notice is sent.

RON ROSS: That's correct.

SENATOR CHAMBERS: You would now say one such check in a two-year period.

RON ROSS: That's what I'm asking, yes.

SENATOR CHAMBERS: Okay. So why not one in a one-year period instead of one in a two-year period?

RON ROSS: Well, that would be better than what we currently have.

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SENATOR CHAMBERS: Okay. That's all I would ask.

RON ROSS: Sure.

SENATOR BOURNE: Any other questions for Mr. Ross? I have one quick one. Of the million dollars in bad checks, how much of that is from businesses which, as part of the centralized child support they bundle and submit? So how much is that business and how much individual money?

RON ROSS: About a third is employers, about a third is noncustodial parents, and about a third is our mistakes that we have made from the beginning like where we would send somebody two payments instead of one that we messed up especially when the Child Support Payment Center was first coming up. I'm in the process of working with all three types of entities and we are being very sensitive in particular to those folks that we made the mistakes. And we're working on very reasonable payment plans with those folks to recoup that money. So we're not being mean at all. We probably have a little more of a hard core press on the employers who have written us bad checks but as far as the people we messed up, no, we're working very nice with them. The noncustodial parents we're still working relatively nice with them and the employers we're really not working nice with them.

SENATOR BOURNE: Further questions for Mr. Ross? See none, thank you.

RON ROSS: Thank you.

SENATOR BOURNE: Next testifier in support? Testifier in opposition? Are there any neutral testifiers? Senator Jensen has waived closing. That will conclude the hearing on LB 444 and the hearings for today.